

# **SECTION 1: INTRODUCTION AND BACKGROUND**

## **INTRODUCTION**

1. This document analyses the responses to the consultation exercise carried out by Dennis Robertson MSP on the proposal for a Disabled Persons' Parking Badges (Scotland) Bill.
2. The Executive Summary and a detailed analysis of the responses are set out in section 2. Section 3 has been prepared by Dennis Robertson MSP and provides his commentary on the results of the consultation.
3. Where respondents have requested that certain information be treated as confidential, or that the responses remain anonymous, these requests have been respected.
4. In some places the analysis includes quantitative data about responses, including numbers and proportions of respondents who have indicated support for, or opposition to, the proposal (or particular aspects of it). In interpreting this data, it should be borne in mind that respondents are self-selecting and it should not be assumed that their individual or collective views are representative of wider stakeholder or public opinion. The principal aim of the document is to identify the main points made by the respondents, giving weight in particular to those supported by arguments and evidence and those from respondents with relevant experience and expertise. A consultation is not an opinion poll and the best arguments may not be those that obtain majority support.
5. Copies of the individual responses are available on the following website: <http://www.dennisrobertsonmsp.net/parliament-debates/members-bill/>
6. Lists of respondents are set out in the Appendix.

## **BACKGROUND**

7. Dennis Robertson MSP's draft proposal, lodged on 18 December 2012 was for a bill to:  
  
strengthen the blue badge scheme enforcement powers, including powers to cancel and confiscate badges in certain circumstances, and to provide an appeals process for applicants when their blue badge application is refused on eligibility grounds.
8. The proposal was accompanied by a consultation document making the case for amending the law in Scotland. This document was published on the parliament's website. It posed 11 questions, most of which invited a "yes" or "no" answer supported with explanatory comments. The consultation was extended from 20 March 2013 to 28 March 2013. Copies or links to it were sent to a wide range of stakeholders including local authorities, the police and voluntary sector

organisations. 81 responses were received, 43 from individuals and 38 from organisations.

9. Following the consultation the final proposal is for a bill to:

strengthen the Blue Badge Scheme enforcement powers, including cancellation and retention of badges in certain circumstances; to provide for elements of the format of a Blue Badge to be approved administratively and to allow people refused a Blue Badge on eligibility grounds to seek a review of the decision.

10. The consultation process is part of the procedure that MSPs must follow in order to obtain the right to introduce a Member's Bill. Further information about the procedure can be found in the Parliament's standing orders (see Rule 9.14) and in the *Guidance on Public Bills*, both of which are available on the parliament's website:

- *Standing Orders (Chapter 9)*

<http://www.scottish.parliament.uk/parliamentarybusiness/26514.aspx>

- *Guidance (Part 3)*

<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/25690.aspx>

## **SECTION 2: ANALYSIS OF CONSULTATION RESPONSES**

# **MEMBER'S CONSULTATION ON THE PROPOSED DISABLED PERSONS' PARKING BADGES (SCOTLAND) BILL**

**Jo Fawcett and Shona Mulholland  
Why Research Ltd**

June 2013

## **Table of Contents**

EXECUTIVE SUMMARY	1
Background	1
2 INTRODUCTION	4
Background	4
Analysis and reporting	5
3 ENFORCEMENT	7
4 DESIGN SPECIFICATIONS	18
5 APPEALS AGAINST ELIGIBILITY DECISIONS	20
6 EQUALITY	25
7 RESOURCES	26
8 OTHER COMMENTS	28
9 SUMMARY	34
APPENDIX 1: LIST OF ORGANISATIONS	5
APPENDIX 2: THE CONSULTATION QUESTIONNAIRE	6

## **ACKNOWLEDGMENTS**

Thanks to the individuals and organisations who responded to the consultation and to all those at Transport Scotland who provided input and offered advice as required.

## **EXECUTIVE SUMMARY**

### **Background**

- 1.1 In December 2012, Dennis Robertson MSP lodged a Members Bill proposal for a Bill to strengthen the current law to allow for better enforcement of the Blue Badge Scheme. A consultation was launched in connection with the draft proposal, setting out the background, making the case for amending the law in Scotland and seeking views on the introduction of a statutory appeals process for applicants whose Blue Badge applications are refused.
- 1.2 The consultation posed a total of 11 questions, most of which invited a “yes” or “no” answer supported with explanatory comments.
- 1.3 Eighty-one consultation responses were received, 43 from individuals and 38 from organisations. Copies of responses are available at <http://www.dennisrobertsonmsp.net/parliament-debates/members-bill/>

### **OVERVIEW OF RESPONSES**

- 1.4 There was widespread support for the general aim of the Bill to provide better enforcement. Responses to questions on specific proposals show that a majority of respondents supports each of these.
- 1.5 The following paragraphs present the responses to each question and highlight the main themes that emerged in relation to each of the questions in the consultation document.

### **Enforcement**

- 1.6 A large majority of respondents agreed with the general aim of the Bill to provide for better enforcement. A dominant theme from those respondents who made further comments related to the perceived extent of current misuse or abuse of Blue Badges and respondents noted that better enforcement would benefit those who have a genuine need and rely on the Scheme. There were also comments that outdated legislation, or lack of clarity in existing legislation, may impact on either ability or willingness to enforce regulations.
- 1.7 When asked ‘Do you think that police traffic wardens and local authority parking attendants should be allowed to confiscate a Blue Badge which they suspect is fraudulent or is being misused?’ many more respondents agreed than disagreed. Many respondents commented that this would be an effective deterrent to misuse as well as helping to remove misused badges from circulation. However, there was also strong emphasis on the importance of clear guidelines and appropriate training for anyone empowered to confiscate a Blue Badge. In addition, there were some comments that ‘suspicion’ might not provide adequate grounds for confiscation.
- 1.8 Many more respondents also agreed than disagreed that local authorities should have the power to appoint persons (other than Parking Attendants in uniform) to examine and/or confiscate suspect Blue Badges as a result of their investigations. Once again, there was comment on the need for appropriate training, as well as careful selection criteria in appointing people to these roles.

There were mixed opinions as to whether such persons should or should not be required to wear uniform.

- 1.9 When asked ‘Do you think that local authorities should have the power to cancel Blue Badges that are lost or stolen?’ a very large majority of respondents who specified an answer were in agreement. The key themes in further comments related to the importance of an up-to-date, reliable and comprehensive database<sup>1</sup> 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 quickly issued to legitimate users.
- 1.10 Many more respondents also agreed than disagreed that a new offence of displaying a cancelled badge should be created. Respondents commented that this would assist effective enforcement and provide a deterrent to misuse and abuse of Blue Badges. However, some respondents were not convinced that there was a need to create a new offence in support of enforcement and believed existing regulation and legislation might be sufficient.

### **Design Specification**

- 1.11 Many more respondents agreed than disagreed that the requirement to publish in regulations the detailed specification for the Blue Badge should be removed. The main theme to emerge from further comments at this question was that the availability of the specification facilitates the forgery of Blue Badges. The Scottish Information Commissioner expressed concern about plans to remove all information from the public domain and suggested that only the counter-fraud elements should be withdrawn.

### **Appeals**

- 1.12 When asked ‘Is there a need for a statutory process of appeal for a Blue Badge?’ many more respondent agreed than disagreed. There were some differences between respondent groups; whilst all disabilities organisations who answered this question agreed, five of the eight local authorities that answered this question did not feel there is a need for a statutory process of appeal. Several local authorities who disagreed mentioned that as Independent Mobility Assessments (IMA) will be carried out there should be no need for another “tier of bureaucracy” or commented that they already adhere to regulations and guidance. Many Blue Badge holders and a disabilities organisation commented that a statutory appeals process would be in the interests of transparency and fairness.
- 1.13 Respondents were asked ‘If you consider that a statutory appeals process is necessary. What format should this take?’ and a wide variety of formats were suggested. However, consistency of process, along with transparency and accountability were seen as important by respondents from across different respondent groups.

---

<sup>1</sup> (The Blue Badge Improvement Service (BBIS) introduced a central database on 1 January 2012 but as Blue Badges normally last for a period of 3 years, it will take three years to be fully populated.

## **Equality**

1.14 Question 9 of the consultation asked ‘Does the proposed Bill have any substantial positive or negative implications for Equality Groups?’ and invited respondents to explain their answers. There appeared to be slightly different interpretations of the question; some comments suggest respondents were answering about all equality groups including disabled people, others suggest respondents were answering about equality groups other than disabled people. However, most respondents who made comments felt that the Bill would be of benefit to the users of the Blue Badge Scheme. There were comments that it would be fairer and also that it would be beneficial in stopping misuse. The Bill was seen as positive for disabled people with no negative implications for other equality groups.

## **Resources**

1.15 Question 10 asked ‘What is your assessment of the likely financial implications (if any) of the proposed Bill?’ and invited explanatory comments. There were fairly common expectations of increased costs, either in the short or longer term, and some concern, from local authorities in particular, that extra funding would be needed from the Scottish Government to support this; although this was not quantified. Not all respondents focused on increased costs and some suggested the overall effect would be cost neutral or that there might be increased revenue from parking charges or savings from reduced fraud.

## **Other comments**

1.16 A large number of respondents also included general comments. Many gave background information or, in the case of individuals and Blue Badge holders, reported their experiences of the Blue Badge Scheme. Many respondents welcomed the Bill.

1.17 There were also various additional or restated comments in relation to the proposals. These included a degree of concern about the confiscation of Blue Badges because of abuse or misuse. There were comments in support of having photographs on the front of Blue Badges and other comments relating to the cost of the proposals.

1.18 One main type of comment related to misuse or abuse of Blue Badges; several respondents reported that they had witnessed this happening. There were suggestions that a public education programme outlining the needs of Blue Badge holders would be beneficial.

1.19 Another main theme to emerge related to non-visible disabilities, with a number of respondents stressing the need to consider all disabilities in relation to eligibility for a Blue Badge.

1.20 There were calls for fairer, consistent assessments<sup>2</sup>. Respondents pointed out that, to many disabled people, Blue Badges are essential.

---

<sup>2</sup> Independent Mobility Assessments introduced in September 2012 are aimed at providing more consistent practice across the country.



## 2 INTRODUCTION

### Background

- 2.1 A disabled parking scheme was first established in the UK over forty years ago, providing on-street parking concessions for people with severe walking difficulties traveling either as drivers or passengers. The Blue Badge Scheme, as it is now known, has been reformed and modernised in recent years with the aim of creating a more consistent and unified scheme across the UK and, importantly, to ensure it is able to deal with growing pressures and demands.
- 2.2 In 2010, the Scottish Government undertook a consultation on Blue Badge reform with the aim of ensuring that the Scheme remained fit for purpose in the 21st century and to ensure continuing eligibility for a Blue Badge amongst those in need whilst reducing misuse of the Scheme. Following that consultation a number of changes were made to the Scheme including:
- amendments to eligibility criteria;
  - improved Badge designs with production and distribution from a central point to prevent fraud;
  - the introduction of IMAs (independent mobility assessments);
  - the introduction of BBIS (Blue Badge Improvement Service) and the central database;
  - changes to the previous conviction rule to allow local authorities to act more quickly to enforce the Scheme more effectively;
  - automatic eligibility for Severely Disabled Service Personnel and War Veterans meeting specific criteria.
- 2.3 In summer 2012, Transport Scotland commissioned further quantitative and qualitative research amongst Blue Badge holders, entitled “The Use and Value of the Blue Badge Scheme” to further inform improvement and development of the Scheme.
- 2.4 In December 2012, Dennis Robertson MSP lodged a Members Bill proposal for a Bill to strengthen the current law to allow for better enforcement of the Blue Badge Scheme. A consultation was launched in connection with the draft proposal, setting out the background, making the case for amending the law in Scotland and seeking views on the introduction of a statutory appeals process for applicants whose Blue Badge applications are refused.
- 2.5 The consultation posed a total of 11 questions, most of which invited a “yes” or “no” answer supported with explanatory comments. The first five questions related to proposals dealing with enforcement issues and Question 6 addressed a proposal to remove the requirement for Scottish Ministers to specify the design of the Blue Badge in regulations. Questions 7 and 8 related to views on the need for a statutory appeals process when a Blue Badge application is refused and Question 9 addressed equalities implications. The final two questions dealt with the potential financial impacts of the proposed Bill and then any additional comments or suggestions linked to the proposals.

2.6 The consultation was distributed to all MSPs, all 32 local authorities in Scotland and 80 organisations as well as being made available on the Scottish Parliament website.

### Overview of responses

2.7 In total, 81 responses were received, 43 from individuals and 38 from organisations. As part of the analysis process, responses were assigned to groups. This enabled analysis of whether differences, or commonalities, appeared across the various different types of organisations and/ or individuals that responded.

2.8 As can be seen in the following table, most organisational responses came from disabilities organisations (16) or from local authorities (14). Individuals who responded included 12 who indicated in their response that they were Blue Badge holders. It cannot be assumed that the remaining 31 individuals do not, or have not held Blue Badges but there is nothing explicit within their response to suggest this is the case.

**Table 1.1 Consultation responses**

Respondent group		Number
	Blue Badge Holders	12
	Other individuals	31
Total Individuals		(43)
	Disabilities organisations	16
	Local Authorities	14
	Other organisations	8
Total Organisations		(38)
<b>Total</b>		<b>81</b>

2.9 A list of all those organisations who submitted a response to the consultation is included in Appendix 1.

### Analysis and reporting

2.10 Comments given at each question were examined and main themes, similar issues raised or comments made in a number of responses, were identified. In addition, we looked for sub-themes such as reasons for opinions, specific examples or explanations, alternative suggestions or other related comments.

2.11 Where questions invited a “yes” or “no” response, results from those questions are presented in table format. Where respondents did not use the questionnaire format for their response but indicated within their text their answer to one of those questions, these have been included in the relevant count. Where comments were made and the text did not indicate a “yes” or “no” answer, the responses have been included in the “not answered” column in the tables.

2.12 The main themes were examined in relation to respondent groups to ascertain whether any particular theme was specific to one particular group, or whether it appeared in responses across groups. When looking at group differences

however, it must be also borne in mind that where a specific opinion has been identified in relation to a particular group or groups, this does not indicate that other groups do not share this opinion, but rather that they have simply not commented on that particular point.

- 2.13 While the consultation gave all those who wished to comment an opportunity to do so, given the self-selecting nature of this type of exercise, any figures quoted here cannot be extrapolated to the wider population.
- 2.14 The following chapters document the substance of the analysis and present the main views expressed in responses. Appropriate verbatim comments are used throughout the report to illustrate themes or to provide extra detail for some specific points.

### 3 ENFORCEMENT

- 3.1 In his introduction to the consultation paper, Dennis Robertson MSP provided background information about the Blue Badge Disabled Parking Scheme and reforms that have been made to the Scheme in recent years. The consultation paper detailed current arrangements for parking enforcement on-street and explained that in off-street parking areas the responsibility for enforcement lies with the operators and owners of the car park, whether local authorities or private operators.
- 3.2 The paper explained that misuse of a Blue Badge is defined in law as a criminal offence and detailed the ways in which police and local authorities work together to investigate, identify and prosecute misuse and fraudulent use of the Scheme. It also quoted research data regarding the role and value of the Scheme for badge holders, the perceived extent and impact of misuse of Blue Badges and the views of badge holders on enforcement; 49% of badge holders surveyed by ODS for Transport Scotland in 2012<sup>3</sup> considered the Blue Badge Scheme was not adequately enforced.
- 3.3 Dennis Robertson MSP went on to explain that his intention is to penalise only those who deliberately abuse the Blue Badge Scheme. Responsible badge holders, who use their badges within the rules of the Scheme, should not be disadvantaged. He believes that traffic wardens and local authority parking attendants need adequate powers to tackle abuse of the Scheme and reduce the scope for deliberate misuse or fraud. The proposals associated with the proposed Bill were summarised in the paper as follows:
- extend the law which currently allows local authority parking attendants, traffic wardens and police to examine a Blue Badge, to also seize and retain the badge in certain circumstances;
  - give local authorities a new power to appoint persons (other than parking attendants in uniform) who are employed by or working on behalf of the local authority, to examine, seize and retain Blue Badges in investigation of fraud or misuse of a Blue Badge;
  - give local authorities the power to cancel Blue Badges which have been reported lost or stolen and no longer held by the badge holder;
  - introduce a new offence for use of a Blue Badge which has been cancelled by a local authority; and
  - remove the requirement for Scottish Ministers to specify the design of the Blue Badge in regulations.
- 3.4 The first question in the consultation asked ‘Do you agree with the general aim of the Bill to provide for better enforcement?’ and went on to invite respondents to explain their answer.

---

<sup>3</sup> The Use and Value of the Blue Badge Scheme (ODS for Transport Scotland, 2012)

**Table 3.1: Whether agree with the general aim of the Bill to provide for better enforcement**

Respondent group	Yes	Qualified Yes	No	Not answered
<b>Individuals</b>				
Blue Badge Holders (12)	3	1	1	7
Other individuals (31)	11	4	1	15
<b>Total Individuals (43)</b>	<b>14</b>	<b>5</b>	<b>2</b>	<b>22</b>
<b>Organisations</b>				
Disabilities organisations (16)	14	1	1	-
Local authorities (14)	13	1	-	-
Other organisations (8)	4	2	-	2
<b>Total Organisations (38)</b>	<b>31</b>	<b>4</b>	<b>1</b>	<b>2</b>
<b>Total (81)</b>	<b>45</b>	<b>9</b>	<b>3</b>	<b>24</b>

- 3.5 As can be seen in table 3.1, a large majority of respondents agreed with the general aim of the Bill to provide for better enforcement. High levels of agreement were expressed by all respondents groups, with 45 respondents stating unqualified agreement, nine stating agreement with a degree of qualification and only three (two individuals and one disabilities organisation) answering “no” they did not agree.
- 3.6 A total of 55 respondents went on to offer further comment, 53 respondents explaining their answer at Question 1 and two offering comments despite not specifically indicating whether or not they agreed with the general aim of the Bill.
- 3.7 There were two particularly dominant themes in the comments made at this question, namely widespread reiteration of support for the overall aim of the Bill and, linked to this, many references to the perceived extent of current misuse or abuse of Blue Badges. These themes were consistent across all respondent groups.

“Guide Dogs Scotland welcomes the move towards improved and effective enforcement of Blue Badge usage. Misuse of Blue Badges impacts on the ability of genuine Blue Badge holders to use these necessary parking concessions.”

“Any improvement in the enforcement of the regulations is to be welcomed given that most recent measures have focused on eligibility, which does not tackle abuse of Blue Badges.”

(Anonymous individual respondent 39)

- 3.8 A number of respondents also specifically noted that better enforcement would benefit those who have a genuine need and rely on the Scheme. Further, a small number of local authorities commented that better enforcement would potentially address loss of revenue in parking charges.

“Fully support the general aims of the Bill. Measures to minimise the fraudulent use of Blue Badges safeguards the interests of those people the scheme is intended to support and aims to address the cost to the public purse.”

(South Lanarkshire Council)

- 3.9 A common sub-theme linked to comments relating to misuse of badges is that outdated legislation, or lack of clarity in existing legislation, may impact on either ability or willingness to enforce regulations. Once again, there were respondents from all respondent groups who expressed this view and many comments indicated that the proposed Bill would facilitate better enforcement of the Scheme.

“Although there is no local information as to the incidence of misuse of Blue Badges, there is a perceived absence of clarity currently as to the responsibility for enforcement.”

(East Dunbartonshire Council)

“The proposed Bill provides enforcement authorities with necessary powers and resources to tackle misuse more effectively.”

(Guide Dogs Scotland)

“The Bill along with the improvements implemented as part of the Blue Badge Improvement Service (BBIS) will give Local Authorities (LA’s), both Decriminalised and non Decriminalised, the necessary powers to enforce the scheme more adequately.”

(Anonymous individual respondent 49)

- 3.10 Several respondents, from across the different respondent groups, commented on the need for better education of the public regarding the Scheme and its regulations. Some respondents commented that improved enforcement could help, in turn, to facilitate improved education and understanding of the Scheme amongst the public.

“Better enforcement not only clarifies the law but also helps in educating the driver to know what is expected and what the penalties are for failing to comply. Improving education and awareness may also prevent the need for enforcement to arise.”

(Inclusion Scotland)

“I do agree with the general aims of the bill as I believe there is more abuse of this scheme than people believe, but enforcement can only work in my opinion along with better detection rates and education of the general public with regards to the rules of the blue badge scheme.”

(blue badge holder)

- 3.11 A very small number of respondents, from the Blue Badge holder and disabilities organisations groups, felt that better education of badge holders would also be beneficial.

“We would like to see badge holders better informed of their own rights and responsibilities in order to stop the practice of badge holders “lending” badges to friends and family members.”

(Spinal injuries Scotland)

- 3.12 Nine respondents, four from the individuals group, expressed agreement with the general aim of the Bill but added some form of qualification to their response. The common theme in the comments from the individuals, other organisations and the Blue Badge holder that commented was that care about implementation and execution would be needed.

“I totally agree with the aim of the Bill but execution has to be handled very carefully. The thought of over zealous officials springs to mind.”

(Anonymous blue badge holder 4)

“We are anxious however that there are sufficient safeguards in place to avoid mistaken or disproportionate enforcement action.”

(Equalities and Human Rights Commission (EHRC))

- 3.13 One respondent noted that there should be caution regarding potential breaches of Human Rights in specific circumstances. This respondent, from the other organisations group, cited potential confiscation of a Blue Badge that was being misused by a third party without the knowledge of the holder and without the badge holder having an appropriate opportunity to respond to investigation if they could not be contacted at the time.

- 3.14 One local authority commented at this question that lack of resources might inhibit implementation and enforcement in practice, albeit the respondent supported the general aim of the proposed Bill.

“I agree with the general principle that there is a requirement to establish clearer, simpler and more straightforward arrangements and processes for carrying out enforcement. However, the reality is that many Local Authorities, Police Forces and Traffic Warden Teams may be unable to resource the additional regulatory burden.”

(Stirling Council)

- 3.15 Three respondents, a Blue Badge holder, another individual and a disabilities organisation, expressed disagreement with the general aim of the proposed Bill. Both the badge holder and the other individual commented that the Bill should focus on misuse of badges, Anonymous individual Blue Badge Holder 8 of them explicitly commenting “no, not unless it is much more specifically aimed at fraudulent and deliberate use by able-bodied non-badge holders. This is the group that badge holders are concerned about when surveyed about greater enforcement”. The disabilities organisation commented on what it perceived as the limitations of the proposed Bill and expressed a need for greater emphasis to be placed on criteria for Blue Badge entitlement as well as less emphasis on alignment with the UK scheme.

- 3.16 Question 2 asked ‘Do you think that police traffic wardens and local authority parking attendants should be allowed to confiscate a Blue Badge which they

suspect is fraudulent or is being misused?’ and invited respondents to explain their answer.

**Table 3.2: Whether police traffic wardens and local authority parking attendants should be allowed to confiscate a Blue Badge which they suspect is fraudulent or is being misused**

Respondent group	Yes	Qualified Yes	No	Not answered
<b>Individuals</b>				
Blue Badge Holders (12)	3	2	1	6
Other individuals (31)	6	4	5	16
<b>Total Individuals (43)</b>	<b>9</b>	<b>6</b>	<b>6</b>	<b>22</b>
<b>Organisations</b>				
Disabilities organisations (16)	8	4	1	3
Local authorities (14)	6	4	2	2
Other organisations (8)	2	2	1	3
<b>Total Organisations (38)</b>	<b>16</b>	<b>10</b>	<b>4</b>	<b>8</b>
<b>Total (81)</b>	<b>25</b>	<b>16</b>	<b>10</b>	<b>30</b>

3.17 As table 3.2 shows, many more respondents agreed than disagreed that police traffic wardens and local authority parking attendants should be allowed to confiscate a Blue Badge which they suspect is fraudulent or is being misused. A total of 41 respondents agreed, 25 unequivocally and 16 with some element of qualification, whilst ten respondents disagreed. A similar pattern of responses was evident across all respondent groups.

3.18 A total of 58 respondents made further comments at this question. A key theme from respondents who gave unequivocal agreement was that this would help put a stop to misuse of badges and would be an effective deterrent to misuse. As Disabled Motoring UK noted, it would also help remove misused badges from circulation:

“It is probably not realistic to expect every single abuser of Blue Badges to be taken to court but if the badge were confiscated on the spot this would act as a preventative measure, as it would remove them from circulation immediately without the associated expense of court cases. Knowing that their badge could be confiscated would also act as an effective deterrent for Blue Badge holders who might otherwise be tempted to loan their badges to other people temporarily.”

3.19 A number of additional themes were consistently evident in comments across different respondent groups as well as from both those agreeing and those disagreeing. One of the most common themes related to the need for thorough training of police traffic wardens and local authority parking attendants in order to ensure appropriate use of the proposed powers to confiscate. Similarly, many respondents from across the different groups noted the importance of clear guidelines.

“[The respondent] believes that police traffic wardens and local authority parking attendants should be allowed to confiscate Blue



Badges. However, it is essential that this power is only given to officers who have been extensively trained in the relevant legislation as well as disability equality and effective communication. Without adequate training there is a risk that disabled people themselves will be disadvantaged by this provision.”

(Capability Scotland)

“We agree that this would be of benefit and aid enforcement; however, it is imperative that clear guidance on this matter should be provided to avoid instances of genuine use being interpreted as fraudulent use or misuse.”

(West Lothian Council)

- 3.20 Several respondents expressed specific concerns about possible inappropriate confiscation of badges from Blue Badge holders whose disabilities may not be obviously and consistently evident<sup>4</sup>.

“Yes, but only if the powers are very clearly defined. Parkinsons UK has very serious concerns about the way in which powers may be used and the potential for unintended consequences for people with fluctuating or invisible disabilities.”

- 3.21 A small number of respondents felt that authority to confiscate badges should be limited to police traffic wardens only.
- 3.22 There were a number of comments on the broader potential role of the police in cases where badges might be confiscated. A Blue Badge holder expressed concerns for the safety of traffic wardens and parking attendants in enforcing confiscation and felt the perceived authority of the police might be needed to assist enforcement. One respondent in the other organisation group also noted that police assistance might be appropriate if it was made an offence if a person in possession of a Blue Badge failed to hand it over. Another respondent in the same respondent group suggested that better protection might be needed for parking attendants and that assaults on parking attendants might be viewed as seriously as assaults on the police, while Falkirk Council commented: “confiscation of a Blue Badge is likely to lead to confrontation which is best dealt with by the Police”.
- 3.23 A small number of disabilities organisations and one other organisation commented that the involvement of the Police should be restricted to cases where it is clear that a crime is being committed.
- 3.24 Several respondents expressed concerns about what constitutes ‘reasonable suspicion’ or whether suspicion alone provides grounds for confiscation of a badge. One Anonymous Blue Badgeholding respondent (7)observed “in this

---

<sup>4</sup> Blue Badges contain the photograph of the holder which amongst other security features is used as the means to identify the holder. Police traffic wardens and local authority parking attendants currently have the power to examine the badge.

country a person is presumed innocent until proven guilty, this is the same for Blue Badge holders and not for Parking Attendants to decide”.

“If a traffic warden can take action at the kerbside, based on suspicion alone, the BB holder must have the right to object and request a police officer be called to adjudicate – and they must be informed of this right.”

(Anonymous individual respondent 50)

“Only where there is objective evidence of misuse. “Suspicion” is too low a threshold: there must be clear evidence above and beyond a hunch or supposition. There is compelling anecdotal evidence of disabled people who are entitled to benefits such as a disabled person’s railcard being challenged by ticket inspectors on trains and buses because they do not have an immediately obvious impairment. This can be humiliating and intrusive. We would not want to see similar situations arising where traffic wardens or parking attendants are confiscating badges where they “suspect” that the badge holder is not disabled.”

(EHRC)

3.25 With similar concern for legitimate badge holders, a small number of respondents commented on the importance of conducting very quick investigations with the authorised holder of a badge, to establish or verify circumstances surrounding suspected misuse by a third party, in order to avoid inappropriate confiscations or delay in return of badges to eligible users.

3.26 The third question of the consultation paper asked ‘Do you think local authorities should have the power to appoint persons (other than Parking Attendants in uniform) to examine and/or confiscate suspect Blue Badges as a result of their investigations?’ and invited respondents to explain their answer.

**Table 3.3: Whether local authorities should have the power to appoint persons (other than Parking Attendants in uniform) to examine and/or confiscate suspect Blue Badges as a result of their investigations?**

Respondent group	Yes	Qualified Yes	No	Not answered
<b>Individuals</b>				
Blue Badge Holders (12)	3	-	2	7
Other individuals* (31)	8	2	5	17
<b>Total Individuals* (43)</b>	<b>11</b>	<b>2</b>	<b>7</b>	<b>24</b>
<b>Organisations</b>				
Disabilities organisations (16)	8	1	2	5
Local authorities (14)	5	3	1	5
Other organisations (8)	4	1	-	3
<b>Total Organisations (38)</b>	<b>17</b>	<b>5</b>	<b>3</b>	<b>13</b>
<b>Total* (81)</b>	<b>28</b>	<b>7</b>	<b>10</b>	<b>37</b>

\*One individual answered both “yes” and “no”

3.27 Once again, 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 suspect Blue Badges as a result of their investigations. Whilst more respondents agreed than disagreed across all respondent groups, there were a higher proportion of individual respondents that disagreed than amongst organisations.

3.28 A total of 54 respondents made further comments at this question and the overriding theme in their comments, regardless of respondent group, was that this would aid and improve enforcement of the scheme.

“I do agree that local authorities should appoint more officials to examine and confiscate illegal or badges being misused, as I believe this is one reason why there is so much abuse of the blue badge as the public are fully aware that there is very little chance of them being detected.”

(blue badge holder)

“It is a simple and effective method of building capacity and resource. It is a way of making enforcement procedures and systems work quicker.”

(Guide Dogs Scotland)

3.29 A small number of respondents noted that additional personnel might be more necessary in rural areas or for smaller local authorities who have fewer parking attendants. However, two local authority respondents felt it might be more appropriate in City areas where there may be higher level of badge misuse, perhaps due to high costs of parking charges.

3.30 A key sub-theme related again to training and the need for anyone involved in monitoring and/or enforcing the Scheme to receive thorough and appropriate training and to be aware of disability equality issues. Comments related to training were made by respondents from across the different respondent groups.

3.31 In addition to comments regarding the importance of appropriate training, a small number of respondents, mostly from the individual respondents group, expressed concerns as to what criteria would be used to select and appoint these additional people and, in one or two instances, cited worries regarding potential abuse of power.

3.32 A range of other sub-themes was evident and some different opinions were expressed regarding the preferred role for additional people and whether or not they should be required to wear uniform. A small number of respondents suggested that uniforms would provide a more immediate and more reliable level of reassurance to badge holders, and afford greater credibility to personnel, than simply carrying identification. However, as Capability Scotland noted, the absence of a uniform would better facilitate discrete surveillance and investigation:

“We appreciate there may be a need for discrete surveillance in order to catch those fraudulently misusing Blue Badges. However, it is essential that plain clothed officers make their identity known as soon as is reasonably practicable when approaching individuals thought to be misusing their badges. This is necessary in order to avoid undue fear or alarm amongst disabled people who often feel vulnerable to crime and anti-social behaviour. All officers should also carry clear identification, including identification in large print and Braille to ensure they can be easily identified.”

- 3.33 A small number of respondents suggested that the role of any additional appointed personnel should be limited to investigation or support of parking attendants and that their powers should not be extended to confiscation of Blue Badges. Conversely, a respondent in the other organisations group noted that such a limitation can result in misuse being identified and a perpetrator being able to drive away without a badge being confiscated if a parking attendant or police traffic warden is not on hand.
- 3.34 Four local authority respondents commented that resources, or funding specifically, might present a challenge in implementing this suggestion.
- 3.35 Reflecting a theme already identified at earlier questions, a number of respondents commented on the need to educate and inform the public, and badge holders particularly, if such a change were introduced.
- 3.36 Question 4 asked respondents ‘Do you think that local authorities should have the power to cancel Blue Badges that are lost or stolen?’ and invited respondents to explain their answer.

**Table 3.4: Whether local authorities should have the power to cancel Blue Badges that are lost or stolen**

Respondent group	Yes	Qualified Yes	No	Not answered
<b>Individuals</b>				
Blue Badge Holders (12)	2	3	-	7
Other individuals (31)	14	-	2	15
<b>Total Individuals (43)</b>	<b>16</b>	<b>3</b>	<b>2</b>	<b>22</b>
<b>Organisations</b>				
Disabilities organisations (16)	15	1	-	-
Local authorities (14)	10	-	-	4
Other organisations (8)	6	-	-	2
<b>Total Organisations (38)</b>	<b>31</b>	<b>1</b>	<b>-</b>	<b>6</b>
<b>Total (81)</b>	<b>47</b>	<b>4</b>	<b>2</b>	<b>28</b>

- 3.37 As table 3.4 shows, a large majority of respondents who specified an answer at this question were in agreement that local authorities should have the power to cancel Blue Badges that are lost or stolen. Only two individual respondents disagreed and four respondents qualified their agreement in some way, whereas 47 agreed.

3.38 A total of 51 respondents made further comments at this question and the key themes in responses, over and above affirmation of support for the proposal, follow the lines of reasoning detailed in the consultation paper. In summary, and for confirmation, the key themes related to the importance of an up-to-date, reliable and comprehensive database<sup>5</sup> 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 quickly issued to legitimate users.

“Blue Badges that have been lost or stolen should be cancelled and made invalid. The provision of arrangements to timeously reissue a replacement badge to legitimate applicants minimises the opportunity to fraudulently use a Blue Badge; whilst ensuring those that benefit from the scheme are not unnecessarily inconvenienced.”

(South Lanarkshire Council)

3.39 A small number of respondents noted that such a power and process would be no different to the procedures for lost or stolen bank cards, credit cards, passports or driving licences.

3.40 The comments from the two respondents who disagreed with this proposal expressed concern that a lost badge can then be found by the user and that genuine loss can cause hardship. A small number of other comments suggested that respondents could envisage situations whereby a badge might be proven lost or stolen, and subsequently cancelled, without the knowledge of the holder. One respondent noted that in any circumstances where a badge is cancelled the badge holder should be notified immediately.

3.41 The final question relating specifically to enforcement asked ‘Do you think that a new offence of displaying a cancelled badge should be created?’ and invited respondents to explain their answer.

**Table 3.5: Whether a new offence of displaying a cancelled badge should be created?**

Respondent group	Yes	Qualified Yes	No	Not answered
<b>Individuals</b>				
Blue Badge Holders (12)	4	-	1	7
Other individuals* (31)	12	-	2	18
<b>Total Individuals* (43)</b>	<b>16</b>	<b>-</b>	<b>3</b>	<b>25</b>
<b>Organisations</b>				
Disabilities organisations (16)	7	7	1	1
Local authorities (14)	8	1	2	3
Other organisations (8)	3	1	-	4
<b>Total Organisations (38)</b>	<b>18</b>	<b>9</b>	<b>3</b>	<b>8</b>
<b>Total* (81)</b>	<b>34</b>	<b>9</b>	<b>6</b>	<b>33</b>

\*One individual answered both “yes” and “no”

3.42 As table 3.5 shows, many more respondents agreed than disagreed that a new offence of displaying a cancelled badge should be created. Six respondents

<sup>5</sup> See footnote 1

disagreed and nine respondents qualified their agreement in some way, whereas 34 agreed.

3.43 A total of 48 respondents made further comments at this question and one key theme was that this would create a strong and clear message about the seriousness of the action and commitment to enforcement.

3.44 However, several respondents, mostly individuals and local authorities, commented that they did not see a need to create a new offence because they felt existing legislation and regulation is adequate. Specifically, respondents' comments included:

- A preference to see effective implementation of civil penalties such as confiscation.
- Belief that a specific new offence is not needed because there is already the power to prosecute for fraudulent display of a Blue Badge / it is currently an offence to park in designated areas without a valid Blue Badge.
- Belief that this is covered by the law relating to theft.

3.45 Another sub-theme, particularly evident in comments from disabilities organisations, related to the need for careful investigation of the circumstances surrounding the display of a cancelled badge and that this should only apply to situations where a person knew that the badge had been cancelled or had reasonable cause to suspect it had been cancelled. The need for sensitive handling was noted and Capability Scotland commented:

“We believe that such an offence should be created but it should only be enforced against those who knowingly use a cancelled badge. Where, for instance, a person is visually impaired or has a learning disability there is a high chance that they might accidentally use a badge which has recently expired or been cancelled. Clearly such a mistake should not warrant criminal charges.”

3.46 Another disabilities organisation expressed concern that there might be periods of time when a badge is cancelled due to a holder no longer meeting criteria under PIP<sup>6</sup> and not having been assessed sufficiently quickly to establish an entitlement through local authority assessment.

---

<sup>6</sup> The Welfare Reform (Consequential Amendments) (Scotland) Regulations 2013 allow individuals in receipt of the Personal Independence Payment (PIP) at agreed criteria to be included in the passporting arrangements for the Blue Badge Scheme in Scotland. The Regulations include transitional arrangements to allow those who are in receipt of HRMCDLA and subsequently are not awarded PIP, or PIP at the level of award required for passporting, to retain their Blue Badge until its expiry date. A person will then be able to apply to their local authority through the other Blue Badge eligibility criteria

## 4 DESIGN SPECIFICATIONS

- 4.1 The consultation paper explained that when the Blue Badge Scheme was first established, each local authority was responsible for producing Blue Badges for their own area and the design of the badge was specified in Regulations to ensure there was consistency and accurate replication across the country. The paper further explained that since the start of 2012 Blue Badges have been produced and distributed centrally for the whole of the United Kingdom. Dennis Robertson MSP went on to explain that since details of the design are no longer required by local authorities, his proposal is to remove the specification requirement from the legislation and replace it with a requirement that the badge should be in a form approved by Scottish Ministers.
- 4.2 Question 6 of the consultation asked ‘Do you agree that the requirement to publish in regulations the detailed specification for the Blue Badge should be removed?’ and asked respondents to explain their answer if necessary.

**Table 4.1: Whether agree that the requirement to publish in regulations the detailed specification for the Blue Badge should be removed**

Respondent group	Yes	Qualified Yes	No	Not answered
<b>Individuals</b>				
Blue Badge Holders (12)	4	-	-	8
Other individuals (31)	7	-	3	21
<b>Total Individuals (43)</b>	<b>11</b>	<b>-</b>	<b>3</b>	<b>29</b>
<b>Organisations</b>				
Disabilities organisations (16)	11	1	1	3
Local authorities (14)	8	2	1	3
Other organisations (8)	5	-	-	3
<b>Total Organisations (38)</b>	<b>24</b>	<b>3</b>	<b>2</b>	<b>9</b>
<b>Total (81)</b>	<b>35</b>	<b>3</b>	<b>5</b>	<b>38</b>

- 4.3 As table 4.1 shows, many more respondents agreed than disagreed that the requirement to publish in regulations the detailed specification for the Blue Badge should be removed.
- 4.4 Thirty-eight respondents commented.
- 4.5 The main theme to emerge, across respondent groups, was that the availability of the specification facilitates the forgery of Blue Badges. For example, The British Parking Association commented:
- “It is important that the detailed specification, including any security features for the badge is not widely published since this is counter-intuitive when combating fraud.”
- 4.6 Another theme was that this is no longer necessary. There were also comments that the only requirements should be that the design is approved by Scottish Ministers and that it is seen as valid throughout the UK. This example is typical of many responses:

“As badges are no longer made locally but are made by a central company this regulation no longer has any value and should be removed.”

(Disabled Motoring UK)

- 4.7 A local authority agreed the removal but was concerned that the lack of access to the design in order to produce fraudulent badges could lead to more badges being stolen from vehicles.
- 4.8 Sense Scotland said they agreed reluctantly due to the on-going fraudulent production of badges: “Moreover, a single UK wide scheme is more likely to be the target of fraudsters for the simple reason that the fraud can be scaled up and make it profitable for criminals to do so.” They also felt that there may be a need to revisit the decision “Should a distinctive Scottish solution to meeting the mobility needs of disabled people in Scotland be necessary”. This respondent was also concerned about increased expense and bureaucracy.
- 4.9 Two local authorities stressed the need for the design to be standard throughout the UK. Another did not feel that removing the requirement would prevent fraud.
- 4.10 Of those opposed to the idea, a disabilities organisation was concerned that the badge would not be recognised outside Scotland. Another felt that those copying badges would use an actual badge rather than a description.
- 4.11 While supportive of the intention of the proposals, the Scottish Information Commissioner, Rosemary Agnew, was concerned about plans to remove information from the public domain. Her view was that rather than remove the Blue Badge specifications from the Regulations in their entirety, only the counter-fraud elements should be withdrawn. She suggested that it would be possible to continue to publish an image of the Blue Badge and a supporting summary of the design, while removing security details from the public domain, thus achieving the purpose of the draft Bill. This would provide a balance and address the public interest in knowing what a Blue Badge should look like, whilst minimising the potential to compromise cases where fraud or forgery is the intention.



## 5 APPEALS AGAINST ELIGIBILITY DECISIONS

- 5.1 The consultation paper detailed recent changes to the assessment process to determine eligibility for a Blue Badge; since September 2012, Occupational Therapists have undertaken Independent Mobility Assessments replacing local arrangements and different practices that had developed over a number of years. The paper also explained that there is no statutory requirement for a review or appeal process, as regulations specify the criteria under which local authorities may grant or refuse a badge.
- 5.2 The paper explained that whilst there is no statutory requirement for a review or appeal process, there is a Code of Practice providing guidance to local authorities on the operation of the Blue Badge Scheme. This Code recommends that local authorities have review procedures in place and that where a review is requested an application is reviewed by an independent mobility assessor who was not involved in the original decision.
- 5.3 The consultation paper also explained that there is a complaints procedure for anyone unhappy with the standard of service provided by a local authority and that there is no statutory time limit preventing a person reapplying for a Blue Badge.
- 5.4 Question 7 in the consultation asked 'Is there a need for a statutory process of appeal for a Blue Badge?' and question 8 then asked 'If you consider that a statutory appeals process is necessary. What format should this take?'

**Table 5.1: Whether there is a need for a statutory process of appeal for a Blue Badge**

Respondent group	Yes	No	Not answered
<b>Individuals</b>			
Blue Badge Holders (12)	4	1	7
Other individuals (31)	9	3	19
<b>Total Individuals (43)</b>	<b>13</b>	<b>4</b>	<b>26</b>
<b>Organisations</b>			
Disabilities organisations (16)	12	-	4
Local authorities (14)	3	5	6
Other organisations (8)	4	-	4
<b>Total Organisations (38)</b>	<b>19</b>	<b>5</b>	<b>14</b>
<b>Total (81)</b>	<b>32</b>	<b>9</b>	<b>40</b>

- 5.5 As table 5.1 shows, many more respondent agreed (32) than disagreed (nine) that there is a need for a statutory process of appeal for a Blue Badge. All disabilities organisations who answered this question agreed. However, five of the eight local authorities that answered this question did not feel there is a need for a statutory process of appeal.
- 5.6 A total of 40 respondents made further comments at question 7.

- 5.7 Several local authorities who disagreed there is a need for a statutory process of appeal commented and most mentioned that as Independent Mobility Assessments (IMA) will be carried out there should be no need for another “tier of bureaucracy”. Some added that they already adhere to regulations and guidance.
- 5.8 COSLA commented that a statutory process would add to costs “which, given the decision is made by independent experts, is not justified”
- 5.9 A local authority suggested that a standard process may not fit all areas.
- 5.10 Many Blue Badge holders, individuals and disabilities organisations along with some local authorities and other organisations commented on their support for a statutory process of appeal. A number of Blue Badge holders and a disabilities organisation commented that this would be in the interests of transparency and fairness.
- 5.11 A Blue Badge holder and an individual along with some disabilities organisations said that people should have the right of appeal.
- 5.12 There were comments from the disabilities group that Welfare Reform<sup>7</sup> will make access to the Scheme more difficult.
- 5.13 The MS Society suggested that local authorities should “make unsuccessful applicants aware of the appeals process and how to request an appeal.”
- 5.14 A statutory appeals process was seen as a way of ensuring consistency across local authorities as well as ensuring that all local authorities have an appeals process. Parkinsons UK reported that their staff have been involved in cases where “there has not been a formal and transparent process to appeal the decision.”
- 5.15 One local authority acknowledged that some do not follow good practice guidance while others from that group saw a statutory process as beneficial to applicants and a way to ensure fairness.
- 5.16 Comments from the other organisations group included that eligibility decisions should be separate from a complaints process. There was also a comment from this group that the appeal would allow the applicant to present additional information; this would be particularly important if their condition had worsened.
- 5.17 A number of organisations, including several local authorities and disabilities organisations, made other comments.
- 5.18 There were suggestions that a decision on a statutory process should be delayed until there has been an evaluation of the IMA.
- 5.19 A local authority pointed out that proper initial assessments would be more cost effective than going through a statutory appeal process. They also felt that effective communication of the reasons for refusal would reduce the number of

---

<sup>7</sup> See footnote 4

appeals. They favoured a mandatory rather than statutory appeals process. They, along with other local authorities, felt there should be some standard process of appeal across local authorities.

5.20 Another local authority felt that if there were a statutory right of appeal then “the majority of refused applicants are likely to appeal (which may increase dramatically following the introduction of Personal Independence Payments (PIPs<sup>8</sup>) later in 2013). This could result in a large volume of appeals to be processed.”

### **Format of Statutory Appeals Process**

5.21 Question 8 then asked ‘If you consider that a statutory appeals process is necessary. What format should this take?’ and 40 respondents commented; this included one who said at question 7 that a statutory appeals process was not necessary and ten who had not specified.

5.22 A wide variety of formats were suggested and the main themes to emerge are outlined below.

5.23 The need for the appeal to be conducted by an independent body or person was mentioned in many responses especially from disabilities and other organisations. The British Parking Association commented:

“The Scottish Parking Appeals Service provides a mechanism for appealing against unfair parking enforcement already; and this may be an appropriate mechanism to deal with removed or cancelled badges.”

5.24 There was a suggestion, from a local authority, that one local authority could carry out appeals for another; but acknowledgement that this may prove difficult, especially if one has a higher rate of appeals than another.

5.25 Many, across all groups, felt that assessments for appeals should be carried out by GPs, Occupational Therapists or other medical personnel. There were some comments that this should not be the same person who carried out any initial assessment.

5.26 There were a number of comments that appeals against refusals from desk-based assessments should involve a medical assessment. Some stressed the importance of a personal rather than desk-based assessment.

5.27 Moray Council with a three-stage process commented:

“Our stage 3 appeal allows a final review of a stage 2 decision by senior managers within our community care setting. Because the clinical decision is evidenced and respected, the decision to refuse is rarely revoked, unless there is new evidence available.”

5.28 Two disability organisations - The Scottish Accessible Transport Alliance (SATA) and ECAS suggested: “A two stage process as outlined in the code - a

---

<sup>8</sup> See footnote 4

review by an independent assessor within the local authority, and the final stage reference to the ombudsman.” Two other disability organisations suggested that the Code of Practice can be used as a basis of a statutory appeals process. North Lanarkshire Council said: “The process outlined in the good practice guidance should be sufficient. No further body should be established.” Others, local authorities and other organisations, said that there are already appeals processes in place.

- 5.29 Consistency, along with transparency and accountability were seen as important across respondent groups. The importance of accessibility was mentioned by respondents from the other organisations group while a disabilities organisation commented further on: “The need for a clear, simple and accessible process – especially for those with language, understanding or sight problems.”
- 5.30 A disabilities organisation felt that access to an appeal should depend on the reason for refusal (eligibility based on desk top assessment or eligibility based on an IMA) or on whether the badge was withdrawn due to misuse. Two from this group commented that applicants must be given details of why they were refused<sup>9</sup>.
- 5.31 A small number, including disabilities organisations and a Blue Badge holder, commented on the need for a speedy appeals process.
- 5.32 There was a comment, from another organisation, that applicants should be informed of how to appeal in a refusal letter. An individual said that the outcome of the appeal should be communicated to the applicant in writing.
- 5.33 The process of a written appeal followed by a face to face presentation was suggested by a Blue Badge holder and a disabilities organisation.
- 5.34 Respondents also mentioned time limits, with the need to set a time limit on appeals suggested by one disabilities organisation South Lanarkshire commented:
- “The removal of the statutory<sup>10</sup> time limit preventing a person from reapplying should also serve to reflect changes in circumstances and in effect facilitate a review of the situation through a new assessment.”
- 5.35 There were many other suggestions made by only one individual or one Blue Badge holder and these included:
- That neither financial nor political considerations should impact decisions.
  - That a statutory appeals process could prove expensive.
  - The need for a similar procedure for appealing a withdrawal on grounds of abuse<sup>11</sup>.

---

<sup>9</sup> Regulation 8(3) of the Disabled Persons (Badges for Motor Vehicles) (Scotland) Regulations 2000 requires a local authority to give the applicant particulars of the grounds for refusal in its notice of determination.

<sup>10</sup> There is no statutory time limit for reapplying for a Blue Badge.

<sup>11</sup> There is provision for such an appeal in Regulation 10 of the 2000 Regulations.

- That the statutory appeals should be administered by the local authority.
- There should be a team within each local authority to review applications.
- That there should only be one appeal allowed.

#### 5.36 Single suggestions from disabilities organisations included:

- The need to minimise stress for the applicant.
- The need to involve a panel made up of people with mobility problems.
- The need for deadlines to be set within the process.
- The need for occupational therapists carrying out assessments to have the capacity to deal with the cases.
- The need for occupational therapists carrying out assessments to have the ability to deal with all relevant disabilities.
- The need for a simple form of statutory appeal such as “summary application to the Sheriff on the ground that the local authority has made a manifest error” (SATA).
- A request for a “similar format to the appeal for the new Personal Independent Payment whereby first there is a reconsideration where the assessment results are looked at by another person and then if the person is still not happy there should be an opportunity for an appeal.” (Disabled Motoring UK)

## 6 EQUALITY

- 6.1 In this section of the consultation paper Dennis Robertson MSP explained that the policy intention of his proposed Bill is to impact positively on disabled people by strengthening enforcement powers to tackle abuse of the Blue Badge Scheme. The paper also noted that there might be issues which could impact on other equality groups and which might not be so apparent.
- 6.2 Question 9 of the consultation asked ‘Does the proposed Bill have any substantial positive or negative implications for Equality Groups?’ and invited respondents to explain their answers.
- 6.3 Forty-four respondents made comments at question 9; a minority included a “yes” or “no” answer. There appeared to be slightly different interpretations of the question; some comments suggest respondents were answering about all equality groups including disabled people, others suggest respondents were answering about equality groups other than disabled people.
- 6.4 Most respondents, including many from the disabilities, local authorities, other organisations, Blue Badge holders and individuals groups felt that the Bill would be of benefit to the users of the Blue Badge Scheme. There were comments that it would be fairer and also that it would be beneficial in stopping misuse. The Bill was seen as positive for disabled people with no negative implications for other equality groups.
- 6.5 A smaller number of respondents, however, did express concern. This included two disability organisations who commented that there will be financial and access difficulties, especially for older disabled people or for those who have significant difficulty in walking. Changing criterion and the lengthy application were seen as barriers. Sense Scotland commented:
- “There will also be negative implications for people who outwardly appear not to require a Blue Badge but who, because of behavioural or other reasons, are nonetheless entitled. Insensitive treatment by those who have been employed to enforce this Bill will lay open the public body or other to a case being brought under the Equality Act (discrimination arising from disability).”
- 6.6 An individual felt that there is disability discrimination within the eligibility criteria. Another felt Blue Badge holders would be faced with increased costs.
- 6.7 West Lothian Council commented “it is necessary to highlight potential issues relating to age where enforcement officers, inadvertently, create a stereotypical culture i.e. the person looks too young to have a blue badge or, in their opinion, is able to walk.” An individual wanted to see training for staff to ensure that badges are not confiscated wrongly.
- 6.8 A disabilities organisation was concerned that disabled people living in rural areas may be disadvantaged as their local authorities would not be able to afford any additional financial input. Another organisation wanted to see an equality impact assessment carried out on the proposals.

## 7 RESOURCES

- 7.1 The consultation paper noted that should they choose to use the powers in the proposed Bill, there might be resource implications for the police and local authorities. The paper further explained that if an appeals process was also supported, this too might have financial implications for the organisations concerned.
- 7.2 Question 10 asked 'What is your assessment of the likely financial implications (if any) of the proposed Bill?' and invited explanatory comments. A total of 46 respondents commented at this question. Three of these respondents said that they did not have sufficient information to answer while three others said that it is difficult at this stage to quantify.

### Increased costs

- 7.3 A Blue Badge holder felt that there would be an additional burden on local authorities and suggested that additional fees could contribute to the cost. A small number of individual respondents and respondents from the other organisation group felt that additional wardens, fraud investigators and/or additional powers would increase costs.
- 7.4 A disabilities organisation said it was difficult to say at this stage but felt that there would be a need for initial and on-going resources. However, they commented, this would be balanced by the introduction of a fairer system.
- 7.5 Another also saw additional costs at the beginning of the Scheme but felt these would decrease in time. They also commented on the benefits of the Scheme as did a further disabilities organisation and an individual.
- 7.6 Using shared training to reduce costs was also suggested by disabilities organisations.
- 7.7 Another disabilities organisation and an individual were concerned about additional costs to users of the Blue Badge Scheme.
- 7.8 Comments from respondents in the other organisation group included concern that local authorities would not be able to fund changes from their current budgets and a suggestion that funding from the Scottish Government would be needed. There was also a suggestion that work would be needed to ensure consistency across local authorities.
- 7.9 Many local authorities commented on negative financial implications. There was concern that additional powers and responsibilities for local authorities would put pressure on budgets. Costs associated with assessments and increased appeals were also of concern. Again there were suggestions that Scottish Government funding would be required.
- 7.10 North Lanarkshire Council that does not charge for parking commented that they would have "costs for employment of enforcement officers parking attendants or other officers." There were also concerns over additional costs

for local authorities that have not introduced decriminalised parking enforcement.

### **Positive implications**

7.11 A small number of respondents commented on potential positive financial implications. Respondents from the local authorities, other organisation, Blue Badge holder and individuals groups commented that financial benefits would result from reduced misuse and fraud.

### **Cost neutral**

7.12 Several disabilities organisations and some individuals felt that additional costs would be covered by consequent reductions in lost parking revenue and increased fines.

7.13 Two local authorities commented that there would be no financial impact.

### **Other comments**

7.14 PAMIS expressed concern that additional parking enforcers may only be used by local authorities with high levels of misuse. They felt that only cities would be able to afford to pay for enforcement and that “smaller LA and rural areas would be less able to support an additional financial commitment. The result might be that some more rural residents with disabilities will not see the benefit of this action.”



## 8 OTHER COMMENTS

- 8.1 Question 11 asked ‘Do you have any other comments or suggestions relevant to the proposals?’ Sixty-one respondents included other comments on the proposals and/or on other issues.

### Other comments on the proposals

- 8.2 There was a degree of concern, from some organisations and Blue Badge holders, about the confiscation of Blue Badges because of abuse or misuse. The Law Society of Scotland, said:

“To confiscate the Blue Badge, without allowing the badge holder to respond may also, we suggest, raise the possibility of breaches of Human Rights and will place a disabled person under a grave disadvantage, restricting their mobility.”

- 8.3 However, there was also a comment, from a disabilities organisation, that “We would like to see badge holders better aware of their own rights and responsibilities, while recognising it is difficult to make people read the leaflets that come with their Blue Badge.”

- 8.4 In relation to any confusion over where Blue Badge holders may park, North Lanarkshire Council said:

“This situation could potentially be improved if all on-street parking bays and pay-and-display bays were clearly signed as payment-exempt of people displaying a Blue Badge.”

- 8.5 A number of respondents commented on the need for a photograph of the holder to be displayed on the front of the badge. However, a disabilities organisation suggested that the advantages and disadvantages of this proposal should be considered fully.

- 8.6 Sense Scotland stressed the need to consider the consequences of more demanding criterion as it could mean a number of people not being able to access mobility support. They added: “Scottish Government should seize the initiative and come up with imaginative solutions to address the very real mobility and access concerns of disabled people.”

- 8.7 Two Blue Badge holders commented on costs. One worried that local authorities would find that excluding people from the Blue Badge Scheme would save them money. Another asked why those with progressive or non-curable diseases had to reapply<sup>12</sup>; they pointed out that there would be financial savings if this group of people did not have to reapply.

---

<sup>12</sup> The new BBIS database includes a facility to mark an individual's record that on reapplication they do not need to be assessed again.

- 8.8 Also on the subject of cost, a local authority said that there is a cost for processing an application whether or not a badge is issued and that costs rise if there is an appeal. This respondent wanted to see local authorities reimbursed for all associated costs and not just for the costs when a badge is issued. Another commented that any extra duties or powers for local authorities should be accompanied by extra funding
- 8.9 There was a comment, from The MS Society, that there should be a “system of automatic renewal reminders<sup>13</sup>”. This organisation also commented on the need for reminders of the rules and regulations to be sent out with new badges and reported that they have received suggestions “that the rules could be condensed onto a card or checklist and kept within the holder’s vehicle.”
- 8.10 A disabilities organisation felt there should be clear guidance on what constitutes misuse.
- 8.11 An individual asked that there be clearly defined powers for traffic wardens and parking attendants and that these be separate from those of fraud investigators. Training and qualifications for these roles would also be required. East Dunbartonshire Council welcomed “better clarity as to the responsibility for enforcement.”
- 8.12 Another organisation asked that “organisational badges be more fully considered as part of this consultation process.”
- 8.13 Moray Council saw the need for the assessment criteria to be better communicated to groups likely to receive complaints from applicants who have been refused, for example MSPs, councillors and GPs. This respondent also stressed the need for a review of the application form:

“A high percentage of applicants comment on the length of the form, its repetitive nature and the unclear questions, making it difficult to complete. From an assessor’s perspective it is extremely difficult to accurately carry out a desk based assessment from the current questions, resulting in a higher level of applicants having to attend for IMA than is necessary. “

### **Additional comments**

- 8.14 Respondents also submitted a variety of other comments. This included 20 respondents who only made general comments on the Blue Badge Scheme and did not address any of the consultation questions. Themes identified in additional comments are detailed below under broad sub-headings.

### **Enforcement**

- 8.15 Several of the individual respondents provided details of seeing Blue Badge misuse or abuse.

---

<sup>13</sup> BBIS provides for automatic renewal reminders.

8.16 One of the main themes to emerge from Blue Badge holders and other individuals was that of people using badges without the badge holder being present; respondents said that this situation must be addressed. A small number mentioned that some family members may think they are allowed to use the badge when shopping for the badge holder.

8.17 The Equalities and Human Rights Commission, commented on the benefits of Blue Badges and on their misuse:

“The Blue Badge system makes an enormous difference to many people’s lives, particularly those whose impairments make public transport use impossible or impractical. We recognise however that for the system to work effectively there must be public confidence that the badges are being used only by those to whom they are issued.”

8.18 There were also many calls for tougher, stricter enforcement. This would require increased powers for local authorities to deal with misuse. There were also several suggestions that there should be more wardens patrolling the street and checking disabled bays; some said they should have the power to hand out fines. An individual called for more prosecutions for fraudulent use. A small number of individuals suggested that Blue Badge abuse should be criminalised<sup>14</sup>.

8.19 The need to check permits to ensure that the driver had the right to use the permit was also seen as important. However, one individual would be concerned “if anyone other than a uniformed traffic warden or a police officer stopped and questioned any disabled person about their Blue Badge. As a woman I would not be happy with anyone stopping me in a car park and would not want to let anyone close enough for me to check their ID.”

8.20 One disabilities organisation wanted to see an education programme for enforcement officers on the needs of disabled people; they stressed this should not be an awareness programme but should include the needs of and barriers for disabled people.

8.21 A small number wanted to see some form of hotline or website where abuse could be reported.

8.22 Another main theme to emerge in many responses from Blue Badge holders and other individuals was dismay over people without badges parking in disabled bays. Respondents wanted to see this situation addressed and there was a comment that measures to curb this should be included in the Bill. One Blue Badge holder felt this most particularly because disabled people have to pay for their badge.

8.23 Another turned the situation on its head with the following comment:

“I must say that I do make every effort NOT to take a non disabled space if there is one place allotted to us, that is only fair.”

---

<sup>14</sup> Abuse of a Blue Badge is a criminal offence.

## **Eligibility and entitlement**

- 8.24 Many respondents raised the issue of non-visible disabilities, pointing out that there are many illnesses and conditions which make walking difficult or which mean the person needs to park in a more accessible location. For example, one individual commented: "Mobility problems are not always just Orthopaedic or Neurological! Respiratory and Cardiac Illness can limit your mobility so the wider scenario should remain included."
- 8.25 A disabilities organisation said that there are some conditions that can be exacerbated by walking distances. There were also comments on problems for people with mental health issues having to walk a long distance. The need for Blue Badges for those with a temporary disability was also mentioned and there was a call for entitlement to Blue Badges for partially-sighted people.
- 8.26 Blue Badge assessments were mentioned in a number of responses from Blue Badge holders and other individuals. Respondents wanted to see a fairer system, for example some commented that they had been assessed walking on carpet or walking indoors with a walking aid and pointed out that walking outside is a different situation. There was also a comment that an assessment had been made shortly after the respondent had taken medication; this had improved his ability and so he had been refused a badge. A number of respondents felt that only GPs or other medical practitioners should conduct assessments. Respondents also mentioned that they wanted to see a fairer appeals process.
- 8.27 A small number of individuals were concerned that there are too many people with Blue Badges; that people who do not need them are being given them.

## **Other comments relating to the Scheme**

- 8.28 A small number of respondents made suggestions for improvements and these included:
- that a replacement badge should state that it is a replacement;
  - that there should be markings on the badge to indicate whether the holder is only a passenger or can be a driver and passenger;
  - that the vehicle registration number should appear on the badge;
  - that there should be a place to hand in old badges before a new one is issued; and
  - that the families of deceased badge holders should be asked to return the badge

## **Off-street parking**

- 8.29 There were a number of comments that, while some supermarkets now patrol their disabled bays, in other supermarket, shopping centre or other similar car parks, misuse of disabled parking bays is common.
- 8.30 There were also comments, from disabilities organisations, that proposals should be extended to off street parking areas.

## Other themes

8.31 Many respondents provided background information on their organisations or on their personal circumstances.

8.32 A number of organisations welcomed the opportunity to respond to the consultation and many, both organisations and individuals, welcomed the Bill itself or passed on their good wishes for the success of the Bill.

8.33 There were also offers of assistance for piloting or improving the Bill. Sense Scotland said:

“We are concerned however that, in attempting to tighten up on enforcement, the draft bill represents a missed opportunity. We are disappointed to respond in this way but feel that the views of families – that we have sought and reported on in a previous consultation on this topic – are not adequately reflected in the measures proposed.”

8.34 An individual included copies of his report on disability parking schemes worldwide and also offered further assistance.

8.35 Another organisation commented on their involvement with “the delivery of the Blue Badge Improvement Service (BBIS) which is delivering fairer and more efficient administration of the Blue Badge Scheme. Improvements to the assessment of eligibility will ensure only those who have genuine need of a Blue Badge have access to designated spaces and facilities.”

8.36 SATA also commented on the BBIS:

“It is important to build on the work of the Blue Badge Improvement Service by creating a level playing field for the administration and enforcement of Blue Badges in Scotland and to continue to strive for the improvement of the Blue Badge Service throughout the United Kingdom.”

8.37 Some respondents felt that an education programme would be beneficial, for example one Blue Badge holder commented: “To be honest I think people fail to understand the reasons disabled spaces exist in the first place, and therefore a public education programme is required. “ Blue Badge holders outlined the need for wider spaces for those who have to manoeuvre wheelchairs into their cars.

8.38 A small number commented that there is a shortage of disabled bays.

8.39 Several respondents, including a number of Blue Badge holders, stressed that the Blue Badge is essential to allow those with disabilities to lead their lives; either to go to work or to visit shops, church, leisure facilities or to visit family and friends.

8.40 A small number of respondents commented on the need for a central database<sup>15</sup> of Blue Badge holders. There was also a comment that there should be set criteria to ensure consistency across local authorities in their assessment and appeals processes.

8.41 One individual commented that Canada issues special licence plates for disabled drivers.

---

<sup>15</sup> See footnote 1

## 9 SUMMARY

- 9.1 There were 81 responses to the consultation and this included 43 from individuals and 38 from organisations. Copies of responses are available at <http://www.dennisrobertsonmsp.net/parliament-debates/members-bill/>
- 9.2 The paragraphs below describe the main themes that emerged across sections and questions in the consultation.
- 9.3 Respondents welcomed the consultation and the opportunity to be involved. There was also widespread support for the general aim of the Bill to provide better enforcement.
- 9.4 A number of themes emerged, primarily around the extent of perceived misuse or abuse of the Blue Badge Scheme and the need for better enforcement, as well as protecting the needs of legitimate Blue Badge holders.
- 9.5 The need for thorough training, and clear guidelines, for anyone empowered to confiscate a Blue Badge that they suspect is fraudulent or being misused was a consistent theme. In particular, there were comments that care should be taken to ensure sensitivity to legitimate Blue Badge holders whose disabilities may not be obviously and consistently evident.
- 9.6 A further recurring theme was evident around the need to educate and inform the public, including Blue Badge holders, about any changes to the Scheme or enforcement measures. Respondents suggested this would help reduce misuse or abuse by creating awareness of more serious enforcement measures and limit unintended misuse by legitimate badge holders.

### **SECTION 3: MEMBER'S COMMENTARY**

I would like to offer my thanks to Transport Scotland who have provided me with support in taking forward my proposal, the accompanying consultation exercise and subsequent discussions with a variety of voluntary sector organisations. Their support has been invaluable. The clarity of the consultation analysis is very helpful and it will certainly assist all those interested in the results of the consultation to understand the issues raised by the responses.

I would particularly like to thank everyone who has taken the time to respond to my consultation. It is clear that all respondents hold strong views about the Blue Badge scheme and are interested in how the proposed changes will work in practice. The consultation received 81 responses, 38 from organisations (including 14 from local authorities, 16 from Disability Groups and 8 others). Of the 43 individuals who responded, 25 did not respond directly to the consultation questions but raised general issues about the scheme. The responses are on my website at <http://www.dennisrobertsonmsp.net/parliament-debates/members-bill/>.

I am also grateful for the press and media coverage of the launch of my consultation. This was helpful in highlighting to a wider audience how misuse of a blue badge can cause considerable inconvenience and distress to responsible badge holders. I am also grateful to the disability organisations for meeting with me to discuss in more detail some of the issues they raised in the consultation.

Overall, the general aim of my proposal to strengthen enforcement of the Blue Badge scheme has been well supported. The individual proposals were also largely supported. In particular the power which will allow local authority parking attendants and police traffic wardens to confiscate badges which they have good reason to believe are being misused and the power for local authorities to appoint persons (other than parking attendants in uniform) to examine and/or confiscate Blue Badges as a result of their investigations. A few local authorities mentioned the potential costs of appointing additional enforcement staff. However, others commented that better enforcement would address the loss of revenue in parking charges. I should like to clarify that the use of these new powers will be voluntary and are intended to allow local authorities to build on local practice and the existing law, which allows examination of Blue Badges, to the benefit of the majority of Blue Badge holders.

Some concerns have arisen however around the detail as to how the powers will be implemented. For example, badge holders are concerned about being disadvantaged if their badges are confiscated due to unscrupulous misuse by a third party, without their knowledge. I want to give reassurance to responsible badge holders and I will be working with the agencies involved to ensure that the process which underpins the legislation will take their interests into account. Where appropriate, the process will ensure that confiscated badges are returned to the rightful badge holder as soon as practicable. The existing powers of examination do not allow for badges to be retained when they are being misused. This means that these badges can continue to be misused and take up valuable parking spaces that should be available for disabled people who need them most. My proposal is aimed primarily at stopping third party misuse of badges.

One of the emerging themes from my consultation is the 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 important, for not only those involved in enforcement of the scheme but also for Blue Badge holders themselves and the wider public. I agree with these views, I will do my best to reinforce this message throughout the passage of the Bill, and to discuss with Transport Scotland and agencies involved how this might be achieved.

I would like to allay the concerns of badge holders and disability organisations that the provisions might be used to question a person's right to a Blue Badge. I agree that some disabilities are not always apparent or visible. Questioning an individual's eligibility to a badge is not the role of an enforcement officer and their training on equality issues should be quite clear on this. Their role 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.

My consultation also asked for views on whether there was a need to provide for an appeals process in legislation for those applicants who had been refused a badge on grounds of their eligibility. The majority of respondents agreed the need for a process of appeal for a Blue Badge (32 agreed and 9 disagreed). The analysis of the responses concluded that there was a desire for consistency of process, along with transparency and accountability. However, there were varying views as to what such a process should look like.

Recent changes to the regulations for the Blue Badge scheme mean that Blue Badge applicants may be assessed by an independent mobility assessor, such as an occupational therapist, who has never been involved in providing medical services to the applicant. The legislation already requires the assessor to hold a professional qualification and the necessary expertise to assess a person's ability to walk.

Additionally, the Code of Practice, which supports local authorities in the operation of the scheme, also recommends that local authorities have a review procedure in place for applicants to request a review of the decision to refuse them a badge.

To my knowledge, 20 of the 32 local authorities have a review procedure in place, although some do not advise applicants that a review process exists. Bearing this in mind and balancing the range of views expressed in the consultation, I think it is important for all applicants that we have a level playing field across the country. On that basis, I am amending my proposal so that the Bill will require local authorities to have a review process in place and to advise applicants of the process. That will mean that applicants who have been refused a Blue Badge on grounds that they do not meet the eligibility criteria for a Blue Badge will be able to ask for a review of the decision.

Finally, respondents widely agreed that the requirement to publish the detailed specification for the Blue Badge in regulations should be removed to prevent fraud. This was supported, to an extent, by the Scottish Information Commissioner, who suggested that rather than remove the specifications in their entirety, the badge image and general description should remain. This would continue Scotland's tradition of being open and transparent with public information. However, she agreed that the detailed security features, which could lead to badges being fraudulently copied, could be removed. I support the Scottish Information Commissioner's position and I will take this forward in my proposal, in conjunction with Scottish Ministers.

Some consistent themes emerged from the consultation, primarily around the extent of perceived misuse or abuse of the Blue Badge scheme and the need for better enforcement, as well as protecting the needs of legitimate Blue Badge holders.

I am happy to take forward a proposal in the Parliament, which has received support from a wide range of respondents. I hope that it will raise awareness of the rights and responsibilities of Blue Badge holders and that any legislation that is passed by this Parliament will help to prevent further widespread misuse of the scheme.

Dennis Robertson MSP

# APPENDIX

## APPENDIX 1: LIST OF ORGANISATIONS

### Organisation name

Aberdeenshire Council  
ACPOS  
British Parking Association  
Capability Scotland  
Continuing Care Service, North East Fife  
COSLA  
Disabled Motoring UK  
Dundee City Council  
East Ayrshire Council  
East Dunbartonshire Council  
ECAS  
Equality and Human Rights Commission  
Falkirk Council  
Guide Dogs Scotland  
Inclusion Scotland  
Inverclyde CHCP  
MACS  
Moray Council  
Multiple Sclerosis Society  
NESS (North East Sensory Services)  
NHS Lothian Smart Centre  
North Ayrshire Council  
North Lanarkshire Council  
PAMIS  
Parkinson's UK  
RNIB  
SATA  
Scottish Borders Council  
Scottish Council on Visual Impairment  
Scottish Information Commissioner  
SDEF  
Sense Scotland  
South Lanarkshire Council  
Spinal Injuries Scotland  
Stirling Council  
The Law Society of Scotland  
West Dunbartonshire Council  
West Lothian Council  
43 responses from individuals

## **APPENDIX 2: THE CONSULTATION QUESTIONNAIRE**

### **Enforcement**

**Question 1: Do you agree with the general aim of the Bill to provide for better enforcement?**

**(Please can you explain your answer?)**

**Question 2: Do you think that police traffic wardens and local authority parking attendants should be allowed to confiscate a Blue Badge which they suspect is fraudulent or is being misused?**

**(Please can you explain your answer?)**

**Question 3: Do you think local authorities should have the power to appoint persons (other than Parking Attendants in uniform) to examine and/or confiscate suspect Blue Badges as a result of their investigations?**

**(Please can you explain your answer?)**

**Question 4: Do you think that local authorities should have the power to cancel Blue Badges that are lost or stolen?**

**(Please can you explain your answer?)**

**Question 5: Do you think that a new offence of displaying a cancelled badge should be created?**

**(Please can you explain your answer?)**

### **Design Specifications**

**Question 6: Do you agree that the requirement to publish in regulations the detailed specification for the Blue Badge should be removed?**

**(If necessary, please explain your answer?)**

### **Appeals against eligibility decisions**

**Question 7: Is there a need for a statutory process of appeal for a Blue Badge?**

**Question 8: If you consider that a statutory appeals process is necessary. What format should this take?**

### **Equality**

**Question 9: Does the proposed Bill have any substantial positive or negative implications for Equality Groups?**

**(Please can you explain your answer?)**

### **Resources**

**Question 10: What is your assessment of the likely financial implications (if any) of the proposed Bill?**

**(Please can you explain your answer?)**

### **General**

**Question 11: Do you have any other comments or suggestions relevant to the proposals?**