

## **Consultation on the proposed Disabled Persons' Parking Badges (Scotland) Bill**

A proposal 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.

**Consultation by  
Dennis Robertson MSP  
Member for Aberdeenshire West**

**December 2012**

If you wish to request this document in an alternative format (e.g. large print) or require additional copies, please call: 0131-348-6201.

An on-line copy is available on the Scottish Parliament's website.

## Introduction by Dennis Robertson MSP

1. I intend to introduce the Disabled Persons' Parking Badges (Scotland) Bill in the Scottish Parliament. The purpose of the Bill is to strengthen the current law to allow for better enforcement of the Blue Badge Scheme.
2. Finding suitable parking spaces, particularly in towns and cities is difficult at any time. However, if you have a disability it can be even more difficult to find a parking space close to your destination, whether it is for work, education or leisure.
3. Blue Badges provide a concession which allows disabled people, who meet certain prescribed criteria and who travel as drivers or passengers, to park on-street with free use of parking meters and pay and display bays. Having a Blue Badge helps people with disabilities to retain their independence by exempting them from normal parking restrictions and allowing them to park close to where they need to go. They can, for example, park on single or double yellow lines unless there are signs indicating that local restrictions apply.
4. It is common knowledge that the Blue Badge Scheme has been open to misuse in the past. Audit Commission reports have identified how criminals forge Blue Badges or steal valid badges from cars, which are subsequently sold on the black market.
5. Blue Badge misuse and fraud have a cost to the public purse and represent an injustice to those with mobility issues who would benefit most from the Scheme. Misuse is seen as a *major* problem by a majority of Badge holders (52%), (425 out of 819)<sup>1</sup>.
6. The recent Audit Scotland report on the National Fraud Initiative (NFI) in Scotland<sup>2</sup> concluded that the NFI had helped local authorities identify 4,403 Blue Badge records where the holder was deceased. It went on to say that Blue Badges are sometimes used or renewed improperly by others after the death of the badge holder.

---

<sup>1</sup> [The Use and Value of the Blue Badge Scheme](#)

<sup>2</sup> [The National Fraud Initiative in Scotland-May 2012](#)

7. I support the recent reforms made by the Scottish Government which have improved the administration of the Blue Badge Scheme and already reduced the opportunity to misuse or fraudulently use a Blue Badge. I want to further tighten up the law to help stop illegal use of Blue Badges and the subsequent inconvenience, disruption and distress this can cause Blue Badge holders. Similar legislation is being progressed in the Westminster Parliament for England and Wales. This consultation paper sets out the background to the issue and makes the case for amending the current law in Scotland.

8. Additionally, the consultation paper seeks views on the introduction of a statutory appeals process for applicants when their Blue Badge application is refused. A decision on whether to include such a provision in my Bill will be taken following consideration of the responses to the consultation.

9. I would like to acknowledge the assistance I have received from Scottish Government officials in developing this document. You are invited to respond to the questions asked in relation to my proposals for the Bill. There is a composite list of questions included at the end of the document for your response.

**Dennis Robertson MSP**



## How the consultation process works

10. This consultation is being launched in connection with a draft proposal which I have lodged in the Scottish Parliament as the first stage in the process of introducing a Member's Bill. The process is governed by Chapter 9, Rule 9.14, of the Parliament's Standing Orders and can be found on the parliament's website at: <http://www.scottish.parliament.uk/parliamentarybusiness/26514.aspx>

11. A minimum 12 week consultation period is required, following which responses will be analysed. Thereafter, a final proposal is lodged in the Parliament along with a summary of the consultation responses. Subject to securing the required level of support for the proposal from other MSPs and political parties, and the Scottish Government not indicating that it intends to legislate in the area in question, I will then have the right to introduce a Bill which will follow the legislative process: generally, scrutiny at stages 1 and 2 by a Parliamentary Committee and at stage 3 by the whole Parliament.

12. At this time a Bill does not yet exist, only a draft proposal for the legislation.

13. The role of this consultation in the development of my Bill is to provide a range of views on the subject matter of the Bill, highlighting potential problems with the proposals, identifying equality issues, suggesting improvements, raising any financial implications which may not have previously been obvious and, in general, to assist in ensuring that the resulting legislation is fit for purpose.

14. Details on how to respond to this consultation follow at the end of the document.

## THE BLUE BADGE SCHEME

### Background

15. The Blue Badge Disabled Parking Scheme has been in place since 1971. In 2011 there were 270,000 badges on issue in Scotland. Blue Badges are issued by local authorities to disabled persons who meet the specific robust criteria contained in the legislation. Badges are generally issued for a period of 3 years but may be issued for a shorter period where the qualifying condition is not long term.

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

- receives the higher rate of the mobility component of Disability Living Allowance (HRMC DLA)<sup>3</sup>; or
- receives the War Pensioners' Mobility Supplement; or
- has received a lump sum benefit under article 15(1)(a) of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011 at tariff levels 1-8 (inclusive); or
- is blind or registered blind.

17. Badges may be issued **following assessment** by the local authority if the applicant:

- regularly drives a vehicle and has a severe disability in both arms and is unable to operate, or has considerable difficulty in operating, all or some types of parking meter; or
- has a permanent and substantial disability which causes the person to be unable to walk, or virtually unable to walk; or
- is unable to walk or virtually unable to walk by reason of a temporary but substantial disability which is likely to last for a period of at least 12 months beginning with the date on which the Blue Badge is issued; or
- is a child under 3 who is required to be accompanied by bulky medical equipment or kept near a motor vehicle so that they can be treated for their condition.

---

<sup>3</sup> The introduction of Personal Independence Payment (PIP) in 2013 by DWP will require changes to the Blue Badge regulations. The Scottish Government consultation on passported benefits is available at <http://www.scotland.gov.uk/Publications/2012/06/9166h>

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

## Recent reforms

19. In the last 3 years, the Blue Badge Scheme has been reformed and modernised to create a more consistent and unified Scheme across the UK and to ensure that it is able to deal with future pressures and demands. The Scottish Government consulted on the reform of the Blue Badge Scheme in 2010.<sup>4</sup> Following this consultation, a number of improvements were made to the Scheme.

20. The changes include:

- **Amendment to the eligibility criteria from April 2011** which now requires an applicant to be “unable to walk” or “virtually unable to walk.” This previously referred to an applicant “having considerable difficulty in walking”.
- **Improved Badge designs** for individual and organisational badges with improved security features to prevent fraud.
- **Introduction of independent mobility assessments (IMAs)** from September 2012 replacing the previous practice of assessment by an applicant’s own GP, providing more consistency of practice.
- **Introduction of the Blue Badge Improvement Service (BBIS)** providing a central database of all new badges issued across the UK from 1 January 2012, with key information on badge holders.
- **Replacement of the three previous conviction rule with one relevant previous conviction.** Until April 2012, local authorities could refuse to issue a badge or request the return of a badge where an applicant had received at least three

---

<sup>4</sup> [Blue Badge Reform- A Consultation Document](#)

relevant convictions resulting from the misuse of the badge. Now only one relevant conviction is required to allow local authorities to take speedy action to enforce the Scheme more effectively.

- **Automatic eligibility for Severely Disabled Service Personnel and War Veterans** in receipt of an award under the Armed Forces Compensation Scheme (AFCS), tariffs 1 to 8, assessed by the Service Personnel and Veterans Agency (SPVA) as having a permanent and substantial disability which causes inability to walk or very considerable difficulty in walking.

## **Parking Enforcement – Current Arrangements**

21. It might be helpful at this point, to explain that the responsibility for on street parking enforcement is for the police and local authorities. The police are responsible where parking remains criminalised. Police forces use police officers or police traffic wardens to enforce parking. Local authorities are responsible in areas where parking has been decriminalised. (Local authorities might also contract out this service to private companies.)

22. In decriminalised areas, parking is enforced by local authorities who use uniformed parking attendants who impose Penalty Charge Notifications for parking infringements. To date, 9 local authorities currently operate Decriminalised Parking Enforcement (DPE). These are Edinburgh, Glasgow City, Aberdeen City, Perth & Kinross, South Lanarkshire, Dundee, Renfrewshire, East Ayrshire and South Ayrshire.

23. In off-street parking areas, responsibility for enforcement lies with the local authority where the local authority owns and operates the car park and with the relevant private operators in the case of car parks not directly controlled by the local authority.

24. The misuse of a Blue Badge is defined in law as a criminal offence and the potential penalty is therefore more serious than that imposed for a parking infringement. Parking attendants and police traffic wardens can issue fixed penalty notices or penalty charge notices to vehicles parked by people misusing or abusing a Blue Badge (as the vehicle is considered to be illegally parked). In addition, the provisions of section 21 of the Chronically Sick and

Disabled Persons Act 1970 make it a criminal offence, to display a Blue Badge that does not conform to the regulations. This offence can attract a fine of up to £1000. Failure to allow examination of a Blue Badge by a police officer, traffic warden or parking attendant can also attract a fine of up to £1000.

25. Police and local authorities also work together to investigate and prosecute misuse and fraudulent use of the Blue Badge Scheme. Some areas carry out joint operations, targeting specific hot spot areas where the misuse of Blue Badges is a regular occurrence.

Parking attendants in Glasgow regularly complete alleged misuse forms to build up evidence of suspected abuse over time. Using this information, the police and local authority are able to follow up with joint “sting” operations. Over a two year period, 12 “sting” operations were carried out, 192 vehicles were investigated, resulting in 51 drivers being charged for misusing a Blue Badge and reported to the Procurator Fiscal. Glasgow City Council records a significant reduction in misuse of Blue Badges following such operations.

26. Although successful, these joint operations can be resource intensive. To be effective in the longer term, they have to be repeated at regular intervals. The Bill’s provisions will provide adequate powers to facilitate action that can be carried out routinely by police traffic wardens or parking attendants when they suspect that a person is misusing a Blue Badge.

27. Where there is reason to believe that an offence has been committed, a report can be sent by the police to the Procurator Fiscal. Local authorities also have the power to report alleged offences to the Procurator Fiscal under *Special Reporting Arrangements* in place for certain public bodies. The Procurator Fiscal makes the decision on what action should be taken in individual cases, based on the circumstances of the case and evidence provided by the agency concerned.

28. The Regulations<sup>5</sup> for the Blue Badge Scheme were recently amended and now provide that the local authority can refuse to

---

<sup>5</sup> [The Disabled Persons \(Badges for Motor Vehicles\) \(Scotland\) Regulations 2000](#)



issue a Blue Badge on re-application or request return of a Blue Badge on the basis that a person has one conviction (rather than three, as before) for misuse of a Blue Badge. This change will make it easier for local authorities to exercise control over those who persist in deliberately misusing badges.

## **Research**

### **(i) Importance of the Blue Badge**

29. Research by ODS for Transport Scotland, (2012), [The Use and Value of the Blue Badge Scheme](#) shows that the Blue Badge plays a vital role in enabling people with mobility problems to live their lives as fully as they can. In the telephone survey of 819 Scottish badge holders and parents of children with badges, 76% (624 out of 819) said that without their badge they would go out less often. Additionally, in focus groups some badge holders said that they would not be able to go out at all.

### **(ii) Misuse of the Blue Badge**

30. Regrettably, Blue Badges may be misused. The same research shows that 83% (679 out of 819) of Blue Badge holders in Scotland had experienced misuse of Blue Badges or disabled persons parking spaces, and 51% (424 out of 819) regularly experienced misuse. Misuse is seen as a *major* problem by a majority of Badge holders (52%), (425 out of 819).

### **(iii) Enforcement issues**

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

## **Proposals**

---

32. My intention is to penalise only those who deliberately abuse the Blue Badge Scheme and not those who comply responsibly with its requirements. I certainly do not want to disadvantage the majority of badge holders who place significant value on their badges and the concessions they provide to allow them to lead independent lives. Those individuals are well aware of their rights and responsibilities as badge holders and fully supportive of improved measures to enforce the Scheme.

33. Traffic wardens and local authority parking attendants need adequate powers to tackle the abuse of the Blue Badge Scheme. If I can facilitate this by bringing forward the provisions in the proposed Bill, then the scope for deliberate misuse or fraud will be reduced.

34. The proposed Bill will:

- 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.

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

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

## **Proposal 1- Power for traffic wardens and local authority parking attendants to confiscate Blue Badges**

35. It is already an offence under section 115 of the Road Traffic Regulation Act 1984 to mishandle a parking document with intent to deceive by using, lending to, or allowing use by any other person. This includes forging or altering such a document. A Blue Badge is a parking document.

36. Only the police currently have the power in the Road Traffic Regulation Act 1984, to confiscate parking documents which have been mishandled. This consultation is about strengthening the current enforcement powers in section 21 of the Chronically Sick and Disabled Persons Act 1970 which allows the police, traffic wardens and local authority parking attendants to examine badges, but it does not give them an explicit power to confiscate the badge.

37. This can lead to situations where a traffic warden and parking attendant who examine a badge having to return the badge to the person using it at that time, even though the badge may have been reported lost or stolen, has expired, has been changed or forged or is being misused by a third party.

38. In cases where a traffic warden or a parking attendant suggests calling the police in order to confiscate a Blue Badge, the person misusing the badge may simply hand it over voluntarily and drive off before the police are able to attend. In other cases however, the person might drive off with the badge or become confrontational while awaiting the arrival of the police.

39. The Scottish Government consultation in 2010<sup>6</sup> on the reform of the Blue Badge Scheme asked whether *“local authorities should have the power to confiscate badges that have been cancelled, and/or are being misused by a third party for their own benefit.”* This proposal was supported by the majority of respondents.

40. Some respondents raised concerns that responsible Blue Badge holders might be put at a disadvantage or discriminated against if, for example, the badge was confiscated because it was being misused by a third party without the badge holder's knowledge.

---

<sup>6</sup> [Blue Badge Reform - Analysis of Consultation](#)

41. The recent research carried out with Blue Badge holders<sup>7</sup> has shown that their awareness of the rules and restrictions is very high. The overwhelming majority (94%) (767 out of 819) support the current eligibility criteria. 78% (623 out of 819) of Blue Badge holders have or are aware of the Blue Badge *Rights and Responsibilities* booklet and 92% (755 out of 819) think they have a good understanding of the restrictions. Focus Group discussions however demonstrated some confusion about the Scheme, despite badge holders claiming that they understood the regulations. This suggests that there may be some accidental misuse of Blue Badges, which highlights the importance of ensuring sensitive enforcement by local authorities.

42. Local authorities will take the full circumstances of each case into account before deciding on the appropriate enforcement action. This is to ensure that a Blue Badge holder is not penalised for example, by the unscrupulous actions of a third party.

In Edinburgh, for example, it is the Council's practice to contact the badge holder in the first instance to ascertain whether they are actually aware that their badge is being misused. In some cases, a letter will be sent to the badge holder reminding them of the rules of the Blue Badge Scheme. Where a Blue Badge has been misused by a third party, action will be taken against the third party.

In Perth and Kinross when it is suspected that a Blue Badge is being misused by a third party, the Council will contact the badge holder at their home to ascertain whether the badge is being used with or without their knowledge. The badge holder may be invited to a meeting by council officials to discuss the circumstances of the misuse and to be reminded of their rights and responsibilities as a badge holder. This will be followed up by a formal letter. Depending on the circumstances of the case and evidence gathered, the third party who has misused the badge may be reported to the Procurator Fiscal.

43. Blue Badge holders are obliged to comply with certain requirements in Regulation 9<sup>8</sup> of the 2000 Regulations on the operation of the Scheme. This requires badges to be returned to the local authority on occurrence of the following events, namely:

<sup>7</sup> [The Use and Value of the Blue Badge Scheme](#)

<sup>8</sup> [The Disabled Persons \(Badges for Motor Vehicles\)\( Scotland\) Regulations 2000](#)

- the expiry of the period for which the badge was issued;
- the death of the holder or, in the case of an organisational badge, the organisation ceasing to exist;
- the holder of the badge ceases to be a disabled person or, in the case of an organisational badge, the organisation ceases to be eligible under regulation 5;
- a replacement badge has been issued under regulation 7 to replace a lost or stolen badge and that badge is subsequently found or recovered;
- the badge has become so damaged or faded as no longer to be adequately legible when displayed on a vehicle or has suffered any other damage which otherwise prevents it from being identified correctly or distinguished from a forgery;
- the badge ceases to be required by the holder or another valid badge is issued to the holder by another issuing authority.

44. There are safeguards in place to reduce the risk of a person continuing to display an expired badge because they have forgotten to re-apply before the expiry date. From January 2012, the new Blue Badge application form asks the applicant if they wish to be reminded when their badge is nearing expiry, in order that they can re-apply in good time. Each person receiving a Blue Badge also receives an information booklet<sup>9</sup> which explains their rights and responsibilities as a badge holder. In cases where a badge holder does display an expired or damaged badge it could be confiscated and returned to the local authority and the holder advised to apply for a new badge.

45. My proposal aims to prevent the continued misuse of Blue Badges in the range of circumstances described above. I am confident that by amending Section 21 of the 1970 Act to provide for confiscation of a badge, where there is reason to believe that it does not meet the required specification or is not being used within the terms of the Scheme will reduce intentional misuse and fraud. This should primarily act as a deterrent. As is the case for refusal to allow inspection of a badge, refusal to allow confiscation of a badge will be an offence. As more local authorities assume responsibility for parking enforcement, it makes sense to provide those authorities with adequate enforcement powers.

---

<sup>9</sup> [Rights and responsibilities of a Blue Badge holder](#)

**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?)**

**Proposal 2- A new power for local authorities to appoint persons, other than parking attendants in uniform, to examine and retain Blue Badges in investigation of fraud or misuse of a Blue Badge.**

46. Enforcement of the Blue Badge Scheme may require more than on the spot confiscation of the badge. Cases of suspected fraud cannot always be investigated immediately. Traffic Wardens or local authority Parking Attendants may identify, for example, that a fake Blue Badge is being used in a particular vehicle on a regular basis. However it is not always possible to approach the driver, as they may not return to the vehicle for several hours. Even if the driver does return to the vehicle, they are currently under no obligation to hand over the badge for confiscation, unless requested to do so by a police officer. In certain cases further investigation may be necessary.

47. Blue Badge misuse may be identified through complaints from the public and further investigation may be required to gather supporting evidence. Such cases are generally the serious end of Blue Badge misuse and represent a deliberate disregard for those with disabilities, making it harder for official badge holders to find parking spaces.

48. Those who misuse Blue Badges may do so deliberately with the intention of avoiding parking charges, particularly in city centres where parking spaces are expensive and can be difficult to access. Using a forged or stolen badge on a regular basis is likely to save a substantial amount in parking charges. It is estimated in Edinburgh that a person not entitled to a badge, who misuses a badge or displays a fraudulent badge daily for a year could save up to £6000 in parking charges in the city centre.

49. The proposal would give local authorities an additional power, should they choose to use it, to employ persons to investigate, examine and confiscate Blue Badges which are suspected of being misused. This will allow for the further investigation of cases which cannot be dealt with immediately by traffic wardens or local authority parking attendants.

50. To support a prosecution, particularly when the use of forged or stolen badges is involved, it is helpful to gather evidence to establish a pattern of misuse over time. An officer appointed to do

this by the local authority would not be required to wear a uniform as traffic wardens or local authority parking attendants are required to do. However they would be required to carry identification to facilitate engagement with any person when investigating the circumstances of an alleged offence. Similar arrangements using identification already operate for local authority Environmental Health Officers.

The City of Edinburgh Council already has dedicated fraud enforcement staff who work alongside parking attendants to investigate misuse or alleged misuse of the Blue Badge Scheme. The Council typically reports 20-30 of the more serious examples of Blue Badge fraud to the Procurator Fiscal each year.

**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?)**



### **Proposal 3 - Power of local authority to cancel a Blue Badge which has been lost or stolen**

51. The Blue Badge Improvement Service introduced a central database which provides local authorities across the UK with up to date information on the status of Blue Badges. Blue Badge holders are required by the rules of the Scheme to report the loss or theft of their Blue Badge to the local authority. This practice allows the local authority to issue a replacement badge to the holder quickly.

52. Each badge issued contains a unique identifier. If a badge is reported lost or stolen, my proposal would allow the issuing local authority to cancel the badge on the database, alerting enforcement officers (across the UK) that it should no longer be displayed on a vehicle. This should not affect official badge holders who, following report of the loss or theft of their badge, will receive a replacement badge with a different identifier. Giving local authorities the power to cancel badges which have been reported lost or stolen would put beyond question the legality of any subsequent use of the badge.

**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?)**

**Proposal 4 - New offence of use of Blue Badge which has been cancelled by a local authority.**

53. As well as providing local authorities with a power to cancel badges which have been reported lost or stolen, it is also proposed to make it an offence to display a cancelled badge on a motor vehicle with a fine of up to £1,000. This proposal will not affect the original badge holder who will have received a replacement badge for their lost or stolen badge containing a different identifying number.

54. Badge holders can only hold one badge at a time. In cases where a badge has been reported lost or stolen and is subsequently found by the badge holder they should, as currently required by the regulations, return the badge to the local authority.

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

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

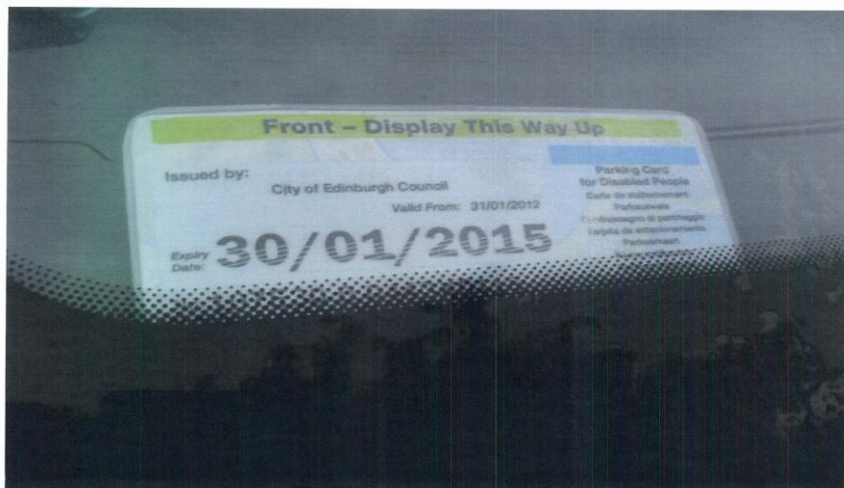
## **Proposal 5 – Remove the requirement for Scottish Ministers to specify the design of the Blue Badge in regulations.**

55. When the Blue Badge Scheme was established in 1971, each local authority was responsible for producing Blue Badges for their own area. The design of the badge was specified in the Regulations to ensure accurate replication and consistency across the country.

56. Local authorities no longer produce Blue Badges in house. Blue Badges issued from 1 January 2012 are produced and distributed centrally for the whole of the United Kingdom by a specialist company under contract to the Department for Transport on behalf of the UK, Scottish and Welsh Governments.

57. The new style badge contains improved security features to reduce the chance of fraud. Nevertheless, as the example below shows, there have already been attempts to forge the new badge using the specifications contained in the Regulations. As details of the badge design are no longer required by local authorities, my 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.

### **Forgery of New Style Blue Badge**



**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 REFUSAL BY A LOCAL AUTHORITY TO ISSUE A BLUE BADGE**

### **Background**

58. I also want to seek views on the introduction of a statutory appeals process for applicants when their Blue Badge application has been refused. The 2010 Scottish Government consultation on the reform of the Blue Badge Scheme asked “*Do you agree that an appeals procedure relating to the application process should be introduced?*” This proposal was supported by the majority of respondents to the consultation.

59. In light of the recent reforms to the Blue Badge Scheme, it would be helpful to know whether there is still support for changing the legislation to allow a person to appeal against a local authority’s decision to refuse them a Blue Badge, on the basis that they do not meet the eligibility criteria.

### **New assessment process**

60. Until 1 September 2012, where an application for a Blue Badge fell into the category of requiring assessment to determine eligibility, it was practice for many local authorities to ask an individual’s GP to provide a medical assessment to inform the decision. Over the years various local arrangements and differing practices have developed, resulting in inconsistent practice.

61. New arrangements from 1 September 2012 introduced Independent Mobility Assessments by Occupational Therapists (OT) to determine eligibility for a Blue Badge. The primary function of the OT is to assess an applicant’s mobility in cases where it is not clear that the applicant meets the eligibility criterion of being “unable or virtually unable to walk”.

62. OTs may use information about an applicant’s medical condition to inform their assessment but the assessment is about the applicant’s functional mobility.

### **Review process**

63. There is no statutory requirement for a review or appeal process in the Blue Badge Scheme, as the regulations specify the

criteria under which local authorities may grant or refuse a badge. However, local authorities are required by the Regulations to provide a written explanation of their grounds for refusing a Blue Badge.

64. In addition, the Code of Practice which provides guidance to local authorities on the operation of the Blue Badge Scheme recommends that local authorities have in place review procedures, if requested by the applicant following a decision to refuse a badge on eligibility grounds.

65. The Code also advises that arrangements should be made for the application to be reviewed by another independent mobility assessor, who has not been involved in the original decision, in cases where the applicant requests a review following assessment by an OT. These arrangements are not in the legislation but represent good practice which the Code of Practice encourages local authorities to use.

66. Additionally, if someone is unhappy with the standard of service or lack of action by a local authority then they are able to make a complaint through their local authority complaints arrangements. If the complaint is not dealt with adequately by the local authority then this can be referred to the Public Service Ombudsman for action.

67. There is no statutory time limit preventing a person reapplying for a Blue Badge. Therefore, where there is a deterioration or new information about a person's condition, they can make a further application for a Blue Badge at any time.

## Research

68. Research for the Department for Transport (DfT)<sup>10</sup> in 2011 looked at the impact of independent mobility assessments on the award of Blue Badges for applicants in England applying under the 'subject to further assessment walking criterion'. It found that intelligently combined cross-checking, desk-based assessment and independent mobility assessment approaches offer a substantially more robust and lower cost, Blue Badge eligibility

---

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

assessment practice than assessments undertaken by an applicant's own GP.

69. The DfT research also reported that following a pilot, focus group discussions with Blue Badge holders revealed support for the independent mobility assessment approach provided it was delivered by an appropriately qualified healthcare professional. The research also found that independent mobility assessments yielded lower appeal rates among unsuccessful applicants (20% compared to 39% for GP assessments).

## Conclusion

70. It may be too early to determine the impact of the introduction of the Independent Mobility Assessment in Scotland. However, it would be helpful to receive views on whether there is a need to introduce a statutory appeals process at this stage or explore more fully what form an appeals process might take for refusal of an application for a Blue Badge.

**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 Issues

71. The policy intention for my proposed Bill is to impact positively on disabled people by strengthening enforcement powers to tackle abuse of the Blue Badge Scheme. This, in turn, will free up parking spaces and allow disabled badge holders to park closer to their destination. This promotes equality of opportunity by enabling disabled people to travel independently.

72. There may however be issues which could impact on the other equality groups (gender, gender identity/transgender, race,

religion/belief, sexual orientation, pregnancy and maternity, marriage and civil partnership) which are not so apparent.

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

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

### **Financial Implications**

73. Should they choose to use the powers in the proposed Bill, there may be resource implications for the police and local authorities in relation to training traffic wardens, local authority parking attendants and the new enforcement officers about the changes to the legislation.

74. If an appeals process is also supported, this may have financial implications for the organisations concerned in implementing the new procedures.

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

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

## How to respond to this consultation

75. Thank you for taking the time to read this consultation. You are invited to respond by answering the questions in the consultation and by adding any other comments that you consider appropriate.

76. Please insert your responses and comments on the composite list of questions at the end of the document. Responses should be submitted by **20 March 2013** and sent to:

Dennis Robertson MSP  
M4.05  
Scottish Parliament  
Edinburgh  
EH99 1SP

or email to:

[Bluebadgeresponses@scottish.parliament.uk](mailto:Bluebadgeresponses@scottish.parliament.uk)

77. Please make it clear whether you are responding as an individual or on behalf of an organisation.

78. To help inform debate on the matters covered by this consultation and in the interests of openness, please be aware that the normal practice is to make responses public - by posting them on the website and in hard copy in the Scottish Parliament's Information Centre (SPICe).

79. Therefore, if you wish your response, or any part of it, to be treated as **anonymous**, please state this clearly along with your reasons for this. If I accept the reasons, I will publish it as an "anonymous response". If I do not accept the reasons, I will let you know and give you the option of withdrawing it or submitting it on the normal attributable basis. If your response is accepted as anonymous, it is your responsibility to ensure that the content does not allow you to be identified.

80. If you wish your response or any part of it to be treated as **confidential**, please state this clearly and give your reasons. If I accept the reasons, I will not publish it (or publish only the non-confidential parts). However, I am obliged to provide a (full) copy



of the response to the Parliament's Non-Government Bills Unit when lodging my final proposal. As the Parliament is subject to the Freedom of Information (Scotland) Act (FOISA), it is possible that requests may be made to see your response (or the confidential parts of it) and the Parliament may be legally obliged to release that information.

81. There are a few situations where not all responses will be published. This may be for practical reasons, for example, where the number of submissions we receive does not make this possible or where a large number of submissions are in very similar terms. In the latter case, only one response and a list of the names of people who have submitted such responses would normally be published.

82. In addition, there may be a few situations where I may not choose to publish your evidence or have to edit it before publication for legal reasons. This will include any submission which contains defamatory statements or material. If I think your response potentially contains such material, usually this will be returned to you with an invitation to substantiate the comments or remove them. In these circumstances, if the response is returned to me and it still contains material which I consider may be defamatory, it may not be considered and it may have to be destroyed.

### **Data Protection Act 1998**

83. As an MSP, I must comply with the requirements of the Data Protection Act 1998 which places certain obligations on me when I process personal data. Normally I will publish all the information you provide (including your name) in line with the Parliamentary practice unless you indicate otherwise. However I will not publish your signature or personal contact information (including, for example, your home telephone number and home address details, or any other information which could identify you and be defined as personal data.)

84. I may also edit any information which I think could identify any third parties unless that person has provided consent for me to publish it. If you specifically wish me to publish information involving third parties you must obtain their consent first and this should be included in writing with your submission.

85. If you consider that your response may raise any other issues concerning the Data Protection Act and wish to discuss this further, please contact me before you submit your response.

86. Further information on the Data Protection Act can be found at [www.ico.gov.uk](http://www.ico.gov.uk)

### **Freedom of Information (Scotland) Act 2002**

87. As indicated above, once your response is received by the Parliament's Non-Government Bills Unit or is placed in the Scottish Parliament Information Centre (SPICe) or is made available to Committees, it is considered to be held by the Parliament and is subject to the requirements of the Freedom of Information (Scotland) Act 2002 (FOISA). If the information you send me is requested by third parties, the Parliament is obliged to consider the request and provide the information unless the information falls within one of the exemptions set out in the Act. This applies even if I have agreed to treat all or part of the information in confidence or to publish it anonymously. I cannot therefore guarantee that any other information you send me will not be made public should it be requested under FOI.

88. Further information about Freedom of Information can be found at: [www.itspublicknowledge.info](http://www.itspublicknowledge.info)

## Questions

**Name: Graeme Lawson/Clare Byrne**

**Individual/Organisation: Mobility and Access Committee for Scotland**

**E-mail: MACS <macs@scotland.gsi.gov.uk**

**Phone number: +44(0)131 244 7275**

### **Enforcement**

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

**Yes.** While the Blue Badge Improvement Service has made significant inroads in this area, and the recent changes to the scheme regarding eligibility and administration should be of significant benefit to those entitled to a Badge, MACS agrees that the measures outlined in the proposed Bill have the potential to address key issues regarding enforcement.

However, this requires:

- (a) Vitally, Badge Holders who are better informed about the correct use of the Badge (this naturally also applies to family members and any others necessarily involved in the use of the Badge) and
- (b) further action to build on the introduction of the Blue Badge Improvement Service and the establishment of a complete central database of valid badges which will still not be in place for almost another 3 years.

However, MACS believes that many of the issues and much of the public concern regarding the enforcement of the Blue Badge relate to off street parking areas and we note that this is not addressed in the current proposals.

#### **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?**

**Yes.**

With the devolution of parking enforcement to local authorities, it is essential that the powers to confiscate a Blue Badge suspected of being used fraudulently should also be devolved. However, it is essential that officers are appropriately trained and that they are aware of the implications for the Badge Holder. This returns to the point made above, that anyone involved in the use of a Badge is made fully aware of its correct usage.

It will be essential for those who will carry out this duty that training is provided by the appropriate authority in disability awareness and race awareness so that communication about the Blue Badge is effective and accurate.

**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?**

Yes. MACS recognises that it may be necessary for Local Authorities to employ the use of staff other than uniformed Parking Attendants to carry out these operations.

However, Badge Holders will have to be aware that this is the case. There are some concerns that this course of action could lead to fraud (the use of fake IDs), so it is vital that those potentially affected are fully informed of the changes.

MACS would prefer that the staff involved in such operations had visible ID and a form of uniform, even if not that of a Parking Attendant.

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

Yes.

This is a reasonable and practical course of action to take, limiting the number of valid badges that are in circulation. It should be conditional on the loss or theft of the badge being formally reported by the Badge holder or the Badge holder's representative.

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

Yes. Provided that the person using the Blue Badge was aware the Badge had been cancelled, this measure would send a strong

message to those who may seek to abuse a Blue Badge. MACS believes that in the majority of cases, the maximum fine of £1000 should be applied.

## **Design Specifications**

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

Yes.

There is no reason that the detailed specification of the Badge should be available for the general public and any potential fraudsters to see

## **Appeals against eligibility decisions**

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

Yes.

In order to standardise the whole process of applying for a Blue Badge, and provide consistency from authority to authority, the introduction of a statutory appeals process would be a practical step to take.

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

If a statutory appeals process is to be introduced, the basis on which an appeal can be made has to be made clear. Where the provision of a badge is denied, the local authority is required to give a written explanation of why the issue of a badge has been refused.

There are at least 3 areas which have to be considered. Firstly there is refusal solely on the basis of a desktop assessment. Secondly, refusal may be after an independent mobility assessment carried out by a qualified healthcare professional. Thirdly, renewal of a badge may be refused because of abuse of the existing badge.

In the first case, the appellant could naturally be offered an independent mobility assessment. In the second case, a second opinion could be offered. The third case may well already be the subject of a (potential) court procedure and there would seem to be no case for an appeal pending the outcome of any prosecution.

Any appeal process must be clear and easy to navigate. MACS notes that those whose first language is not English and those who may have literacy difficulties, a learning disability or cognitive impairment, and those with a visual impairment will all find it difficult to access an appeals process unless specific measures are taken to improve accessibility.

## **Equality**

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

No - With the exception of the cautions we have expressed above. MACS notes that the intention of the proposed Bill is to discriminate positively in favour of disabled people.

## **Resources**

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

While this is difficult to quantify, there is likely to be a cost implication if a statutory appeals process is introduced. This could be offset by the increased parking revenue from those who were previously exploiting the benefits of abusing the Blue Badge. The employment of additional staff to examine Badges would be an additional cost but again there is potential to recoup this through badges seized.

## **General**

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

MACS would like to see similar measures taken to formalise the use of the Blue Badge in off street parking areas.

We would emphasise that a high profile campaign to educate Blue Badge holders on their rights and responsibilities would go a long way to reducing the level of abuse of the Badge.

Responses should be submitted by **20 March 2013** and sent to:

Dennis Robertson MSP  
M4.05  
Scottish Parliament  
Edinburgh  
EH99 1SP

or email to:

[Bluebadgeresponses@scottish.parliament.uk](mailto:Bluebadgeresponses@scottish.parliament.uk)