

EXECUTIVE NOTE

THE DISABLED PERSONS (BADGES FOR MOTOR VEHICLES) (SCOTLAND) AMENDMENT (No. 2) REGULATIONS 2011

SSI 2011/410

1. The above instrument is made in exercise of the powers conferred on the Scottish Ministers by section 21 of the Chronically Sick and Disabled Persons Act 1970 (1970 Act). The instrument is subject to negative resolution procedure.

Policy Objective

2. The Blue Badge scheme in Scotland is being reformed to reflect the significant social changes that have taken place since its introduction (as the Orange Badge Scheme) in 1971 and to ensure the Scheme is administered efficiently, consistently and fairly.
3. The instrument amends the Disabled Persons (Badges for Motor Vehicles) (Scotland) Regulations 2000 (the Principal Regulations), implement the second tranche of reforms. The amendment instrument extends the eligibility criteria to severely disabled service personnel and war veterans who have been certified by the Secretary of State as having a permanent and substantial disability which causes inability to walk or very considerable difficulty in walking, provides that a local authority should carry out an independent mobility assessment when an applicant's eligibility is in doubt, amends the grounds on which a local authority may refuse to issue, or may withdraw, a disabled person's badge (known as a Blue Badge); amends details relating to appeals to Scottish Ministers for the withdrawal or refusal to issue a badge due to a relevant conviction; and prescribes the new form of a badge. The changes will come into effect on 1 January 2012, with the exception of the independent mobility assessment provisions, which will come into effect on 1 September 2012.
4. Earlier this year Ministers from the Scottish Government, the Department for Transport and the Welsh Government agreed to collaborate on the development of a Blue Badge Improvement Service (BBIS). The BBIS will come into effect in Scotland and England on 1 January 2012 and Wales on 1 April 2012, and will improve the Blue Badge scheme through the provision of secure printing, personalisation and distribution of newly designed Individual and Organisational Badges from a central point. It will also introduce an on-line application form and a national database of Blue Badge holders. These changes should make the application process more consistent across Scotland and make the administration of the scheme more efficient while tightening up the enforcement of the scheme.

Severely Injured Service Personnel and War Veterans

5. Under regulation 4 of the Principal Regulations disabled veterans are automatically eligible for a Blue Badge if they are in receipt of a War Pensioner's Mobility Supplement. However the supplement is only paid to veterans injured before 6 April 2005. In line with the Armed Forces Covenant, local authorities have been informed that anyone receiving an award under the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011, which came into force on 9th May 2011, may be eligible for a Blue Badge without further assessment.

6. The Ministry of Defence has agreed that eligibility for a Blue Badge should be automatically extended to service personnel and veterans who have been both awarded a benefit (giving rise to entitlement to a lump sum at tariffs 1-8) under the AFCS, and assessed and certified by the Service Personnel and Veterans Agency (an executive agency of the Ministry of Defence) as having a permanent and substantial disability which causes inability to walk or very considerable difficulty in walking. This instrument clarifies the recent practice by extending the eligibility criteria and ensures that all eligibility criteria are contained in legislation.

Independent Mobility Assessments

7. We are amending regulation 4 of the Principal Regulations to provide that a local authority should carry out an independent mobility assessment when an applicant's eligibility is in doubt, in certain eligibility criteria. Eligibility for a Blue Badge is defined in legislation, but the administrative and assessment procedures adopted are a matter for local authorities to decide on. An applicant's eligibility for a badge can be considered as either 'eligible without further assessment' or 'eligible subject to further assessment'.
8. Around 50% of badge holders are 'eligible without further assessment' because, for example, they are in receipt of the Higher Rate Mobility Component of Disability Living Allowance or are registered blind. For those who are eligible subject to further assessment, the main criterion is specified at paragraph 4(2)(f) which provides eligibility for people "unable to walk or virtually unable to walk". This eligibility criterion covers the majority of assessed applicants. Most local authorities currently use GP assessments to help determine eligibility in these cases.
9. There is a widespread perception that professionals such as physiotherapists and occupational therapists are often best placed to assess eligibility due to their professional knowledge of mobility. In order to ensure a fairer allocation of badges, we have therefore amended legislation to prescribe that eligibility under 4(2)(f) be confirmed through use of an independent mobility assessment unless the authority is satisfied in a particular case that it would not assist it in deciding whether the applicant was eligible (i.e. that it is self-evident that the applicant is eligible or ineligible). The legislation also prescribes the use of Independent Mobility Assessments (IMAs) in assessing eligibility under 4(2)(g) which covers temporary badges to people "unable to walk or virtually unable to walk by reason of a temporary or substantial disability which is likely to last for a period of at least 12 months".
10. The other categories of those eligible subject to further assessment, specified at regulation 4, are drivers with severe upper limb disabilities (regulation 4(2)(e) and children under the age of 3 with specific conditions (regulation 4(1)(b)); have not been amended as we understand from local authorities that it is relatively easy for them to reach an eligibility decision on the small number of applicants applying under these criteria without recourse to a face-to-face assessment.
11. The independent mobility assessment should be conducted by a person who is recognised by the issuing authority as holding a professional qualification relating to the assessment of a person's ability to walk, who is not employed or engaged in any other capacity as a provider of goods or services (including medical services) to the applicant and not related to the applicant. The assessment will be carried out on the applicant's functionality rather than, as was previous carried out by GPs, on their medical diagnosis.

12. It will be down to the local authority concerned to determine the circumstances in which an independent mobility assessment should be used, to determine the procedures used for that assessment and to determine the disabled people, class of disabled person or class of disability that demonstrate self-evident eligibility without the need for an independent mobility assessment.
13. To allow health boards and local authorities to make a more efficient move to the introduction of IMAs, the provisions concerning IMAs will come into force on 1 September 2012.

Grounds by which a local authority may refuse to issue, or withdraw, a badge

14. The 1970 Act states that "a badge may be issued to a disabled person resident in the area of the issuing authority". We have amended regulation 8 of the Principal Regulations to include a provision which allows the local authority to refuse to issue a badge if the applicant fails to provide adequate evidence of residency.
15. Given the amendments summarised above regarding eligibility under regulation 4(2)(f), we have also added a provision to regulation 8 to allow local authorities to refuse to issue a badge if a report from an independent mobility assessor confirming an applicant's eligibility has not been made available to that local authority in a form that is satisfactory to them.
16. Regulation 9(1) lists a series of events, on the occurrence of any of which, a badge should be returned to the issuing authority. Regulation 9(1)(e) has been amended to include circumstances in which a badge has suffered any damage that prevents it from being identified correctly or distinguished from a forgery. This would cover, for example, scenarios involving accidental damage or where a badge may have been deliberately tampered with in some way. Regulation 7(1) has also been amended, to allow for a replacement to be issued in circumstances where a badge is no longer able to be identified or distinguished from a forgery.
17. Regulation 9(1)(f) has been amended to allow a local authority to seek return of a badge from a resident in circumstances where another authority issues the same person a badge and both badges are 'current' at the same time. The Blue Badge scheme has always operated on a one badge per person basis. The 1970 Act states that "a badge may be issued to a disabled person". The Government wants to clarify that this means that someone should have only one badge. It is possible that if someone has dual residency or moves home and applies to the new authority or makes false representation, they could obtain more than one badge. In that scenario, the amendment described here would enable recovery of the first issued badge. For the same reasons regulation 8 has been amended to provide that an authority may refuse to issue a badge if the applicant already holds a current badge issued by another issuing authority.
18. The most significant change to the Regulations, from an enforcement perspective, is in respect of the ability to withdraw a badge for misuse under regulation 9(2). Previously, other than where a badge had been obtained by false representation, a badge could only be withdrawn for misuse if three "relevant" convictions had been obtained. This was unduly burdensome and deterred many local authorities from withdrawing badges where it was warranted. Furthermore, the definition of a "relevant conviction" was outdated. It included convictions for parking convictions. However, under civil parking enforcement, local authorities deal with parking contraventions by issue of Penalty Charges rather than prosecutions and the Government would not favour badges being withdrawn for parking contraventions. As such the definition of a "relevant conviction" in the Principal Regulations (regulation 2), has been replaced.
19. Under the amended Regulations, a badge can be withdrawn for one successful prosecution of a badge holder or third party of a relevant conviction, which is now an offence under S21(4B) of the 1970 Act which covers misuse of a real badge or use of a fake/altered badge while the vehicle is being driven; or an offence under sections 115 or 117 of the Road Traffic Regulation Act 1984 which covers misuse of a real badge or use of a fake/altered badge when the vehicle is parked. It

also includes a catch all provision to cover any statutory or common law offences involving dishonesty or deception committed in the United Kingdom.

20. Where the offence prosecuted was committed by a third party using the holder's badge, the authority needs to demonstrate that the holder knew the third party was using the badge. To address any instance where a badge holder might attempt to sell their badge, it will be possible to withdraw a badge where the holder has purported to transfer the badge to another person.
21. In addition to this an amendment to regulation 8(2)(a) has been made to replicate the changes to regulation 9(2), described above, in circumstances where a local authority may refuse to issue a badge. Previously a local authority could refuse to issue a badge on various grounds, including previous misuse that led to three relevant convictions. Now, a local authority can refuse to issue a badge for, amongst other reasons, previous misuse having led to one conviction of a “relevant conviction”.

Appeals to Scottish Ministers

22. Regulation 10 provides for appeals to Scottish Ministers in certain circumstances against decisions of local authorities to refuse to issue a badge or to require the return of a badge. The current legislation provides the actual address to which the complainant can appeal which very quickly gets out of date. We have decided to remove regulation 10(4) and will include the address to which appeals can be sent in our forthcoming electronic “Code of Practice” this will ensure that local authorities will be able to include the correct address in letters to applicants or badge holders when setting out the appeals process.
23. This change has been approved by the Scottish Committee of the Administrative Justice and Tribunals Council.

Prescribe the form of a badge

24. Regulation 11, and the Schedule of the Principal Regulations are being amended to implement a new Blue Badge design. The existing badge design is very easy to copy and to forge, and details such as the expiry date can be altered. A new design is being implemented for both individual and organisational badges, which uses sophisticated technologies to ensure badges cannot be copied or forged, and details cannot be altered. The new badge design also includes raised text features, a hologram and has to be tested to withstand up to 120 degrees Celsius.
25. Blue Badges are frequently misused by someone other than the badge holder. The written information contained on the badge has been changed to clarify the correct use of a badge. The introduction of Part IIIA of the Schedule will mean that an up to date photograph of the badge holder must be submitted and digitally scanned on the back of an individual badge to ensure the badge holder can be identified if necessary. The standards for photographs outlined in Part IIIA of the Schedule are the same as those used for passports and driving licences.

Guidance

26. To improve consistency throughout Scotland and to assist with the enforcement of the scheme, the Scottish Government intends to issue a “Code of Practice” to local authorities. The guidance should ensure local authorities do not divert from the criteria contained in legislation and will include sections on the application process, assessing eligibility, administration and enforcement. The guidance will include details on how to use the new powers provided by these regulations and will include case studies, checklists and a model application form.

Consultation

27. The Scottish Government consulted on the reform of the Blue Badge Scheme, including the proposed design of the new badge, through a formal public consultation between June and October 2010. Those consulted included local authorities, health boards, police boards and over 300 organisations, the majority of which were disability organisations.
28. We received 515 responses, 418 from individuals and 97 from individuals. The majority of the responses supported the changes that are being made to the Regulations. These included tightening up and extending eligibility criteria and improvements to the security of badges. An Analytical Report on the Consultation was published in December 2010 and can be viewed at the Scottish Government's Blue Badge website (<http://www.transportscotland.gov.uk/road/policy/blue-badge-scheme>).
29. We recently consulted all Scottish local authorities and health boards about the introduction of IMAs, following their responses we decided to put back the mandatory introduction of IMAs until 1 September 2012. Findings from the consultation can be viewed at the Scottish Government's Blue Badge website (<http://www.transportscotland.gov.uk/road/policy/blue-badge-scheme>).
30. An Equality Impact Assessment on the Reform of the Blue Badge scheme can be viewed at the Scottish Government's website.

Financial Effects

31. The Scottish Government does not believe that implementation of the Regulations will impose significant costs on local authorities or to individuals.
32. We believe that the introduction of Independent Mobility Assessments should bring about savings compared to the current charges met by Health Boards for around 30,000 assessment carried out by an applicant's GP each year. A Business Regulatory Impact Assessment is not required as there is no impact on Scottish businesses.

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