

EXPLANATORY MEMORANDUM TO
THE DISABLED PERSONS (BADGES FOR MOTOR VEHICLES) (ENGLAND)
(AMENDMENT) REGULATIONS 2013

2013 No. 2203

1. This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument amends the Disabled Persons (Badges for Motor Vehicles) (England) Regulations 2000 (“the Principal Regulations”) primarily in order to implement the Disabled Persons’ Parking Badges Act 2013 (“the 2013 Act”).

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 Section 21 of the Chronically Sick and Disabled Persons Act 1970 (“the 1970 Act”) provides for the issue by local authorities of badges for motor vehicles driven by, or used for the carriage of, disabled persons. The Principal Regulations make provision regarding the issue and use of such badges (known as “Blue Badges”) in England.

4.2 This instrument amends the Principal Regulations for the purpose of implementing the 2013 Act, which amends section 21 of the 1970 Act, and to delete obsolete provisions of the Principal Regulations and modify others.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- What is being done and why

7.1 Regulation 2(2)(a)(i) of the instrument amends the definition of “disabled person’s badge”, in consequence of the amendment of section 21(1) of the 1970 Act, the effect of which is that badges must now be in a form specified or approved by the Secretary of State, instead of in a form prescribed by Regulations. Paragraphs (6), (7) and (8) of Regulation 2 delete references in, provisions of and the Schedule to the Principal Regulations, all relating to the prescribed form of the badge, which were made redundant by the amendment of the 1970 Act.

7.2 The effect of these changes is to remove the detailed badge specification from the face of the Principal Regulations. The policy intention is to protect the high-security features of the new Blue Badge design from public disclosure, thereby mitigating the risk of forgery and enabling greater flexibility to change both the form of the badge and the specification in response to sophisticated forgeries that may nevertheless appear on the black market.

7.3 The substantial financial value of a badge is contributing to both increasing demand for badges and the incentive to commit fraud and abuse the scheme. This includes the forgery of badges; the failure to return and/or the continued use of badges after the validity period has expired or after the death of the badge holder; and the misuse of genuine badges by unauthorised persons in circumstances in which the disabled badge holder does not obtain any benefit. The National Fraud Authority estimates abuse of the scheme to be costing local authorities up to £46mn per annum in lost parking revenue.

7.4 Although the detailed badge specification will no longer be prescribed on the face of the Principal Regulations, it will be made available to organisations contracted to supply the badge and local authorities have been made aware of the badge security features for enforcement purposes.

7.5 Regulation 2(2)(a)(ii) and (b) amends or modifies references in the Principal Regulations to a local authority or to residence in the area of a local authority, for the purpose of a new power introduced by the 2013 Act (section 21(8B) of the 1970 Act) which enables the Secretary of State to issue badges to members of HM Armed Forces, their families and support workers, who are resident in prescribed places overseas. Paragraphs (5) and (8), together with the Schedule, prescribe places of residence for this purpose.

7.6 Section 21(2) of the 1970 Act provides that local authorities may only issue badges to disabled people “*resident in the area of the issuing authority*”. However, members of HM Armed Forces and their families posted overseas may cease to be resident in the area of any UK issuing authority. In addition, by virtue of their status, they may not be considered to be resident in the country in which they are serving/living for the purpose of local equivalents of the Blue Badge Scheme. Effectively, they are excluded from applying for a badge. The new power establishes the Secretary of State as a badge issuing authority for this group. The Government’s intention is to assist all members of the HM Armed Forces community residing overseas who are caught in this peculiar ‘residency trap’.

7.7 Regulation 2(3) and (4)(a) and (b) clarifies provisions of the Principal Regulations which enable an authority to refuse to issue a badge in circumstances in which the applicant already holds another valid badge, or to recover a badge if another valid badge is issued to the holder by another issuing authority. The amendment clarifies that the provisions apply to recognised badges issued outside Great Britain.

7.8 Regulation 2(4)(c) introduces a new requirement that a badge which is retained by a constable or enforcement officer because it is being displayed on a vehicle otherwise than in accordance with the Principal Regulations shall be returned as soon as reasonably practicable to the holder (provided that the authority does not have grounds, under the Principal Regulations, for withdrawing the badge). This is designed to offer protection to badge holders in circumstances where a badge that is being misused by a third party is retained by an enforcement officer.

7.9 Regulation 2(4)(d) and (e) and (5) delete provisions of the Principal Regulations concerning appeals, consequent upon the disapplication in England by the 2013 Act of the right to appeal to the Secretary of State contained in section 21(7C) of the 1970 Act. The appeal applied only in limited circumstances. In future, individuals not satisfied with an appeal to their local authority in these circumstances may take their complaint to the Local Government Ombudsman under Part III of the Local Government Act 1974. Regulation 2(4)(e) also revokes regulation 9(4) of the Principal Regulations which is considered to serve no purpose.

7.10 Regulation 3 ensures that deletion of the appeals procedure from the Principal Regulations does not affect any appeal under section 21(7C) of the 1970 Act initiated before the commencement of the 2013 Act.

- Consolidation

7.11 The Department is not undertaking a consolidation of the Principal regulations at this time.

8. Consultation outcome

8.1 This instrument does not introduce new policy but merely amends the Principal Regulations, for the primary purpose of implementing the Disabled Persons' Parking Badges Act 2013. This includes deleting obsolete provisions and modifying others. A full consultation on the policy provisions of the 2013 Act was carried out by the Department for Transport (DfT) in March 2010 as part of a consultation on the wider reform of the Blue Badge scheme. Further consultation is not appropriate or necessary.

8.2 Over half of respondents were unequivocally in favour of a badge retention power with a further 36% supporting it so long as innocent badge holders are not greatly inconvenienced. The amendment in this instrument requiring that a badge retained because it is being misused by a third party should be returned to the holder, provides explicit protection for badge holders and is in direct response to the consultation.

Consultation with local authorities and disability representatives after enactment of the 2013 Act, by way of small focus groups, confirmed support for this amendment.

8.3 There was no opposition to removing the very limited (and little used) appeal to the Secretary of State in cases relating to the misuse of badges. As local authorities administer the Blue Badge scheme, DfT proposed abolishing the appeal to the Secretary of State in favour of the Local Government Ombudsman reviewing complaints. Complaints about local authority administrative fault fall within the jurisdiction of the Local Government Ombudsman, who already hears complaints against local authorities in respect of other aspects of the Blue Badge scheme. Respondents generally favoured the Ombudsman reviewing complaints (only 2% were opposed). Others expressed no preference or suggested alternative procedures.

8.4 Consultees showed little interest in the Armed Forces amendment and expressed no opposition.

9. Guidance

9.1 The Department for Transport will issue guidance to local authorities on the provisions of the 2013 Act as implemented by this instrument.

10. Impact

10.1 The impact on business, charities or voluntary bodies is zero.

10.2 The impact on the public sector is expected to be neutral. However the instrument will complete implementation of the 2013 Act, which should benefit local authorities by reducing lost parking revenue through improved enforcement powers. An impact assessment on the wider Blue Badge reform programme by the Department for Transport indicated that the measures in the 2013 Act could contribute to savings for local authorities of at least £3-7m per year. There is potential, however, for even greater savings, given the National Fraud Authority's estimate that Blue Badge fraud costs up to £46m per year.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Government's policy on sunset and review clauses does not apply to these Regulations because they do not give rise to a direct net burden on business or civil society organisations. However, the Department's impact assessment on the overarching Blue Badge Reform Programme committed to reviewing, in 2015, whether policy

objectives had been met. The 2013 Act, which this instrument implements, is part of that Reform Programme and will feature in the 2015 review.

13. Contact

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