



## EXPLANATORY NOTES

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### **Disabled Persons' Parking Badges (Scotland) Act 2014 (asp 17)**

£4.25



# **DISABLED PERSONS' PARKING BADGES (SCOTLAND) ACT 2014**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes have been prepared by the Scottish Government on behalf of Dennis Robertson, MSP, the member in charge of the Bill for the Act, in order to assist the reader of the Act. They do not form part of the Act and have not been endorsed by the Parliament.

2. The Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section, or part of a section, does not seem to require any explanation or comment, none is given.

### **SUMMARY**

3. The Act amends section 21 of the Chronically Sick and Disabled Persons Act 1970 (the 1970 Act) in order to help tackle blue badge misuse. It will provide additional powers to local authorities and the police to enforce the blue badge scheme in Scotland. It will strengthen current enforcement powers, including the ability to cancel or confiscate a badge in certain circumstances and will provide for security features of the blue badge format to be approved administratively by the Scottish Ministers. The Act also provides for regulations to be made to ensure that people refused a blue badge on eligibility grounds are entitled to seek a review of the decision from the local authority.

### **COMMENTARY ON SECTIONS**

#### **Section 1 - Form of badge**

4. Paragraph (b) of section 21(1A) of the 1970 Act requires the Scottish Ministers to prescribe the form of the badge in regulations. The regulations must be published (see sections 27 and 41 of the Interpretation and Legislative Reform (Scotland) Act 2010), thus all of the details about what constitutes a badge in proper form are immediately put into the public domain.

5. Section 1 substitutes a new paragraph (b) that will allow the Scottish Ministers to specify requirements about the form of a badge administratively, which means the requirements so specified need not be published. The new paragraph (b) continues to allow the Scottish Ministers to specify some, or all, of the requirements as to the form of a badge in regulations.

## **Section 2 - Power to cancel badge**

6. Section 21(7AB) of the 1970 Act (inserted by the UK Disabled Persons' Parking Badges Act 2013 ("the 2013 Act")) is extended to Scotland to give local authorities the power to cancel a badge that is no longer held by the person to whom it was issued. If cancellation is effected other than where the badge has been reported lost or stolen, the cancellation will take effect only when the authority has given notice to the holder.

## **Section 3 – Power to confiscate badge**

7. Section 21(4D) of the 1970 Act (inserted by the 2013 Act) is extended to Scotland and will give constables and enforcement officers the power to retain a badge that has been presented to them for examination and which appears not to have been issued under the Act, has been cancelled, should have been returned to the local authority or is being misused.

8. Subsection (4E) of section 21 of the 1970 Act confers a power to make regulations to prescribe what is to be done with a badge which has been retained under subsection (4D). That power will be exercisable by the Scottish Ministers in relation to a badge that has been retained in Scotland.

## **Section 4 – Offence of using cancelled badge**

9. Section 21(4BZA) of the 1970 Act (inserted by the 2013 Act) is extended to Scotland. The effect is that it will be a criminal offence for a person to drive a vehicle whilst displaying a badge which has been cancelled or should have been returned to the issuing authority.

10. Section 21(4C) of the 1970 Act (as amended by the 2013 Act) provides that an offence under section 21(4BZA) is a summary offence and can be punished with a fine up to level 3 on the standard scale. The standard scale is set out in section 225 of the Criminal Procedure (Scotland) Act 1995; when the Bill for the Act received Royal Assent, (September 24, 2014) a level 3 fine was £1,000.

11. Subsection (1ZA) of section 117 (wrongful use of a disabled person's badge) of the Road Traffic Regulation Act 1984 (inserted by the 2013 Act) is extended to Scotland so as to make it an offence to display on a parked vehicle a badge which has been cancelled or should have been returned to the issuing local authority. An offence under section 117(1ZA) of the Road Traffic Regulation Act 1984 is also a summary offence that attracts a fine of up to level 3 on the standard scale (see Schedule 2 to the Road Traffic Offenders Act 1988).

## **Section 5 – Enforcement officers**

12. Subsection (4BA) of section 21 of the 1970 Act confers on constables, traffic wardens and parking attendants the power to require a person to produce a badge for examination. Section 3 provides an additional power under subsection (4D) to retain a badge produced for examination in certain circumstances (see paragraph 8 of these Notes).

13. Section 5 confers the enforcement powers mentioned in the preceding paragraph on a new class of official, namely a person employed or engaged by a local authority to exercise those powers. Section 5 achieves this by inserting a definition of “enforcement officer” as section 21(8A) of the 1970 Act. Enforcement officer is defined to mean traffic wardens and parking attendants as well as the new class of official. References to “enforcement officer” are then inserted into the relevant subsections of section 21 of the 1970 Act.

14. Constables, traffic wardens and parking attendants will be in uniform when exercising their enforcement powers under section 21 of the 1970 Act. The new class of official which section 5 will create need not be uniformed. To ensure that the public can know that a person not in uniform who is requesting the production of a badge is entitled to make that demand, section 5 inserts a new section 21(4BC) into the 1970 Act. The new subsection provides that it is not an offence to fail to present a badge for examination in response to a request from someone other than a constable, traffic warden or parking attendant, unless the person making the request produces evidence of the person’s authorisation to make it.

#### **Section 6 – Review of local authority decision**

15. Section 6 allows the Scottish Ministers to make regulations requiring local authorities to review on request a decision not to award a badge on the grounds that a person is not eligible for one. Eligibility depends on being a disabled person of a description prescribed in regulations under section 21(2) of the 1970 Act. The description of eligible person when the Bill for the Act received Royal Assent (September 24, 2014) was given by the Disabled Persons (Badges for Motor Vehicles) (Scotland) Regulations 2000 (S.S.I. 2000/59).

16. Regulations made under section 6 will specify who may apply for a review, the manner in which an application for a review is to be made and the procedure to be followed by the local authority when conducting and disposing of a review. The regulations will be subject to the negative procedure (as defined by section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010).

#### **COMMENCEMENT**

17. Under section 7, sections 6 and 8 come into force the day after Royal Assent (September 25, 2014). The other provisions in the Act will come into force by order on a day determined by Scottish Ministers.

## PARLIAMENTARY HISTORY

18. The following table sets out, for each stage of the proceedings in the Scottish Parliament on the Bill for the Act, the dates on which the proceedings at that stage took place, and the references to the official report of those proceedings. It also shows the dates on which Committee Reports and other papers to the Act were published, and references to those reports and other papers.

<b>Proceedings and reports</b>	<b>Reference</b>
Bill as introduced - December 8, 2013	<u>Session 4, SP Bill 44</u>
Spice Briefing - March 19, 2014	<u>Sb 14-24</u>
<b>Stage 1</b>	
<b>(a) Local Government and Finance Committee</b>	
January 22, 2014	<u>Minute of proceedings</u>
April 2, 2014 (evidence)	<u>Column 3331 -3350</u>
April 30, 2014	<u>Minute of proceedings</u>
5th Report 2014 (Session 4) Disabled Persons' Parking Badges (Scotland) Bill – Stage 1 Report	<u>Report</u>
<b>(b) Finance Committee</b>	
March 12, 2014	<u>Minute of proceedings</u>
<b>(c) Delegated Powers and Law Reform Committee</b>	
March 18, 2014	<u>Column 1363</u>
<b>(d) Consideration by the Parliament</b>	
Stage 1 Debate – May 20, 2014	<u>Columns 31202 - 31225</u>
<b>Stage 2</b>	
<b>(a) Local Government and Regeneration Committee</b>	
June 11, 2014	<u>Columns 3696 - 3707</u>
Spice Briefing	<u>Sb 14-53</u>
An amended Bill was not produced at stage 2 as the provisions of the Bill were agreed without amendment.	
<b>Stage 3</b>	
<b>Consideration by the Parliament</b>	
Stage 3 debate – August 19, 2014	<u>Columns 33624 - 33644</u>
<b>Royal Assent</b> – September 24, 2014	<u>Disabled Persons' Parking Badges (Scotland) Act 2014</u>





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