



EXPLANATORY NOTES

Disabled Persons' Parking Badges Act 2013

Chapter 4

£5.75

DISABLED PERSONS' PARKING BADGES ACT 2013

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Disabled Persons' Parking Badges Act 2013 which received Royal Assent on 31 January 2013. They have been prepared by the Department for Transport in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.

2. The notes need to 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 and section 117 of the Road Traffic Regulation Act 1984 relating to the "Blue Badge" (disabled parking) scheme. The amendments affect only England and Wales. The Act's purpose is to:

- Provide local authorities with the power to cancel badges no longer held by the person to whom they were issued (e.g. when the badge is lost or stolen);
- Amend the existing inspection power so that authorised enforcement officers in plain clothes may inspect badges (currently this is limited to constables and specified enforcement officers who in consequence of other legislation generally have to be uniformed);
- Provide constables and enforcement officers with power to retain a badge that has been produced to them and which is cancelled, due for return, being misused or fake;
- Clarify the existing offences relating to the wrongful use of blue badges to put beyond doubt that it is an offence to use a badge that should have been returned and apply the same offences to a badge that has been cancelled;
- Remove the requirement for the Secretary of State to prescribe the badge design in regulations and replace it with a requirement that a badge needs to be in a form approved by the Secretary of State;
- Permit the Secretary of State to issue badges to armed forces personnel and their families posted overseas on UK bases; and

- Disapply in England the provisions providing for an appeal to the Secretary of State which apply in limited circumstances in which a local authority has required a badge to be returned or refused an applicant a badge, in each case, for reasons relating to the misuse of badges.

BACKGROUND

4. The “Blue Badge” scheme is administered by local authorities. It provides parking concessions for certain severely disabled people to enable them to park without charge or time limit in otherwise restricted on-street environments (on-street parking meters, pay-and-display, disabled parking bays) and to park on yellow lines in England for up to three hours. The scheme has existed since 1971 and facilitates access for 2.6 million disabled people.

5. The primary legislation governing the scheme is section 21 of the Chronically Sick and Disabled Persons Act 1970 (the 1970 Act); and sections 115 and 117 of the Road Traffic Regulation Act 1984 (the 1984 Act). Unless otherwise stated, all references in these Notes to “section 21” are references to the 1970 Act. Section 21(7) makes provision for matters to be prescribed by regulations which are subject to annulment by resolution of either House of Parliament. The Disabled Persons (Badges for Motor Vehicles) (England) Regulations 2000 (SI 2000/682) are the relevant regulations as regards England. The equivalent Welsh regulations are the Disabled Persons (Badges for Motor Vehicles) (Wales) Regulations 2000 (SI 2000/1786).

6. Section 21 provides that regulations may make provision for the following matters:

- form of badge
- description of disabled person to whom a badge may be issued
- circumstances and manner in which a badge may be displayed
- period of issue of a badge
- circumstances in which a badge must be returned
- cases in which an authority may refuse to issue badges
- fee which may be charged for the issue of a badge
- conditions (relating to the misuse of badges) which must be met if an authority is to refuse the issue of badge
- conditions (relating to the misuse of badges) which must be met if an authority is to require the return of a badge
- procedure for appeals in certain circumstances
- badges issued outside Great Britain which may be recognised.

7. Subsections (4BA), (4BD) and (4B), respectively, provide constables and enforcement officers with power to inspect badges; make it an offence not to produce a badge for inspection when required to do so; and make it an offence to drive a vehicle displaying a disabled person’s badge that is not issued under section 21 and displayed in accordance with the regulations made under it. Section 117 of the 1984 Act makes it an offence to park a vehicle displaying a disabled person’s badge that is not issued under section 21 and displayed in accordance with the regulations made under it. Section 115 of the 1984 Act makes it an

offence to use, lend or allow use of a blue badge with intent to deceive or to make or have in one's possession anything so closely resembling a blue badge as to be calculated to deceive.

8. 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 estimate abuse of the scheme to be costing local authorities some £46m per annum in lost parking revenue. The Act represents the final part of a programme of reforms – developed in cooperation with local authorities and disability groups – intended to modernise and improve the scheme by addressing limitations in the current legislation.

9. In January 2012 the Government introduced a national Information and Communication Technology (ICT) system to aid the administration and enforcement of the scheme. For this to operate effectively, the status of badges held on the system must be accurately recorded. Currently, the 1970 Act and SI 2000/682 provide for the circumstances in which a badge must be returned and is no longer valid for use. However, the 1970 Act includes no explicit power for an authority to cancel a badge that is no longer in the possession of the holder e.g. when it has been lost or stolen. The adoption of such a power will avoid doubt as to the legal status of such a badge and should facilitate access for enforcement authorities to more reliable data as to the status of badges upon interrogation of the national ICT system.

10. Subsection (4BB) of section 21 provides a power for constables and specified enforcement officers to inspect badges. The effect of the definitions (which cross-refer to other legislation) is such that, for all practical purposes, the power applies only to uniformed enforcement officers. This denies local authorities the flexibility of using officers in plain clothes, such as specialist fraud teams.

11. Section 21(6) states that a badge shall remain the property of the issuing authority. However the 1970 Act contains no power for local authorities to recover badges. The practical effect of this is that, when presented with a badge that is required to be returned, being misused or fake, an enforcement officer is obliged to return it to an offender.

12. Section 21(4B) provides that a person who drives a motor vehicle on a road (within the meaning of the Road Traffic Act 1988) at a time when a badge purporting to be of a form prescribed under section 21 is displayed on the vehicle is guilty of an offence unless the badge is issued under section 21 and displayed in accordance with regulations made under it. Section 117 of the 1984 Act provides for a similar offence.

13. However it is not clear if these offences apply in circumstances in which a badge is not returned in accordance with regulations made under section 21(6) and/or section 21(7A)(b) of the 1970 Act and continues to be displayed. This is unsatisfactory as the meaning of provisions that concern criminal offences should be unambiguous.

14. The current requirement in section 21(1) for the Secretary of State to prescribe the badge design in regulations has the effect of requiring the disclosure of certain high-security features of the badge which ought not to be a matter of public record. This compromises the security of the scheme. In addition, the requirement to prescribe badge design by regulation constrains the ability of the Secretary of State to react quickly in circumstances in which it becomes necessary to change the badge design in order to frustrate forgery.

15. Currently section 21(2) provides that a badge may be issued to a disabled person of any prescribed description "resident in the area of the issuing authority". This excludes members of HM Armed Forces and their families posted to UK bases overseas who have ceased to be resident in the area of any issuing authority. The Armed Forces Covenant is committed to rectifying this by establishing the MoD as an issuing authority for these people.

16. Sections 21(7C) and (7E) of the 1970 Act provide a limited right of appeal to the Secretary of State in circumstances in which a local authority has refused an application for a badge or required a badge to be returned, in each case, for reasons relating to the misuse of badges. The right of appeal is of limited use to applicants because it does not apply to all of the decisions that an issuing authority may make in cases which may be prescribed under section 21(7)(a) in which the issue of a badge may be refused. In particular, the right of appeal does not apply to decisions concerning eligibility in circumstances in which eligibility is not automatic. The right is also of limited use to badge holders because it does not apply to all of the decisions that an authority may make in circumstances which may be prescribed under section 21(6) in which a badge must be returned. In consequence, only one or two appeals are made each year. These involve an inappropriate diversion of central government resources. In practice, given the limited nature of the right of appeal to the Secretary of State, most complaints concerning local authority decisions about the Blue Badge scheme are resolved by the Local Government Ombudsman pursuant to existing powers contained in Part III of the Local Government Act 1974.

TERRITORIAL EXTENT

17. Except for section 6 (which concerns HM Armed Forces and is therefore reserved) the subject matter of the Act is a devolved matter as regards Scotland, Wales and Northern Ireland. However as the 1970 Act extends to England, Wales and Scotland, the Act extends to all three territories, for which purpose:

- sections 1 to 4 apply to Wales and make substantive changes to the law in Wales. Accordingly, an appropriate legislative consent motion was passed in the National Assembly for Wales on 6 November 2012;
- by contrast, although the Act extends to Scotland, it does not change the law of Scotland in any substantive manner, and therefore does not contain any provisions falling within the terms of the Sewel Convention.

COMMENTARY ON SECTIONS

Section 1: Form of parking badges

18. This section removes the requirement, in England and Wales, for the Secretary of State to prescribe in regulations the form of a parking badge and replaces it with a requirement that badges issued under section 21 must be in a valid form; that being a form specified or approved by the Secretary of State. The section makes consequential amendments to section 21 and to section 117 of the 1984 Act to substitute references to “of a form prescribed” with “in a valid form”.

Section 2: Cancellation of parking badges

19. This section gives a local authority in England and Wales the power to cancel a badge that is no longer held by the person to whom it was issued and provides that a badge so cancelled may not be displayed on any vehicle. It provides that it is not necessary to give notice of cancellation to the holder if the holder has reported the badge as having been lost or stolen.

Section 3: Use of parking badges that are no longer valid

20. This section extends the offence in section 21(4B) to make it an offence in England and Wales to drive a vehicle displaying a badge that should have been returned to the issuing authority or which has been cancelled. The section also amends the offence in section 117 of the 1984 Act such that it is an offence in England and Wales to display on a parked vehicle a badge that should have been returned to the issuing authority or which has been cancelled.

Section 4: Enforcement

21. This section provides a power for a constable or enforcement officer in England and Wales to retain a badge that has been presented to them and which appears not to have been issued under the Act or which has been cancelled, should have been returned or is being misused. The section provides a power to make regulations to prescribe what is to be done with a badge so retained.

22. The section also extends the definition of an enforcement officer to include any appropriately authorised employee or contractor engaged by a local authority in England and Wales (i.e. whether or not uniformed). If any such employee or contractor fails to produce appropriate evidence of authority, it is not an offence for a person to fail to produce a badge when requested.

Section 5: Appeal against refusal to issue badge or requirement to return badge

23. This section removes, in England, a person’s right of appeal to the Secretary of State in cases where an authority refuses to issue a badge or requires the return of a badge, in each case, for reasons relating to the misuse of badges; and makes consequential amendments such that, where the badge is required to be returned, it may not be displayed on any vehicle with immediate effect.

Section 6: Parking badges for disabled service personnel etc overseas

24. This section establishes the Secretary of State as a badge issuing authority for members of the armed forces and persons employed in support of those forces – together with members of the same household of such persons – resident overseas in places to be prescribed. The section makes consequential amendments to section 21 so that specific references to a local authority are to be read as including the Secretary of State as if he were a local authority in England. The section also makes consequential amendments so that references to “the area of the issuing authority” are to be read as references to the prescribed places overseas.

COMMENCEMENT

25. The Act will come into force on the date specified by the Secretary of State in an order made by statutory instrument.

HANSARD REFERENCES

26. The following table sets out the dates and Hansard references for each stage of the Act’s passage through Parliament.

Stage	Date	Hansard reference
House of Commons		
First Reading	20 June 2012	Vol 546 Col 883
Second Reading	6 July 2012	Vol 547 Col 1263
Committee	5 September 2012	Public Bill Committee
Report and Third Reading	9 November 2012	Vol 552 Cols 1118-1140
Royal Assent	31 January 2013	Vol 557 Col 1071
House of Lords		
First Reading	12 November 2012	Vol 740 Col 1274
Second Reading	30 November 2012	Vol 741 Cols 391 - 408
Order of commitment discharged	19 December 2012	Vol 741 Col 1554
Third Reading	15 January 2013	Vol 742 Col 596
Royal Assent	31 January 2013	Vol 742 Col 1637

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ISBN 978-0-10-560413-6



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