

EXPLANATORY MEMORANDUM TO
THE DISABLED PERSONS (BADGES FOR MOTOR VEHICLES)
(ENGLAND) (AMENDMENT) (No 2) REGULATIONS 2011

2011 No. 2675

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 The Statutory Instrument (SI): 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); raises the fee which a local authority may charge for the issue of a badge; prescribes the form of a badge; and provides that a local authority should carry out an independent mobility assessment when an applicant's eligibility is in doubt.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 The maximum fee that a local authority may charge for the issue of a badge is being raised from £2 (which has applied since 1983) to £10. Further information on this is contained in paragraph 7.17.
4. **Legislative Context**
 - 4.1 The SI amends the Disabled Persons (Badges for Motor Vehicles) (England) Regulations 2000 ("the Principal Regulations") to bring into force improvements to the Blue Badge scheme as part of an overall reform programme announced by Government in February 2011.
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

Independent Mobility Assessments

7.1 We are amending the Principal Regulations to provide that a local authority should carry out an independent mobility assessment when an applicant's eligibility is in doubt.

7.2 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'. Around 36% 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.

7.3 For those who are not automatically eligible, the main criterion is specified at regulation 4(2)(f) which provides eligibility for people with a "permanent and substantial disability that causes inability to walk or very considerable difficulty in walking". This eligibility criterion covers around 99% of assessed applicants. Around 70% of local authorities still use GP assessments to help determine eligibility in these cases. However, there are widely held perceptions that assessment by an applicant's own GP creates a bias in favour of the applicant and that health care professionals such as occupational therapists and physiotherapists are often best placed to objectively 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 regulation 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 is eligible (i.e. that it is self-evident that the applicant is eligible or ineligible).

7.4 We have defined an "independent mobility assessor" as someone who is recognised by the local authority to which the application for a badge is being made as: holding a professional qualification, the obtaining of which involved them being trained in the assessment of a person's ability to walk; and having the expertise necessary to assess (on behalf of the local authority) the ability to walk of the applicant. We have also required that an independent mobility assessor must never have been employed or engaged as a provider of medical services to the applicant and is not, in the opinion of the local authority, unable to provide an independent assessment because of a personal or commercial relationship with the applicant.

7.5 The other assessed eligibility criteria, specified at regulation 4(2)(e) and regulation 4(3), which, respectively, cover drivers with severe upper limb disabilities and children under the age of 3 with specific conditions, 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 an independent assessment.

7.6 It will be down to the local authority concerned to interpret this new provision, 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 that demonstrate self-evident eligibility without the need for an independent mobility assessment.

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

7.7 The Chronically Sick and Disabled Persons Act 1970 already states that "a badge may be issued to a disabled person.....resident in the area of the issuing authority". The Government has reinforced this in the Principal Regulations by including in regulation 8(2)(b)(i) a provision which allows the local authority to refuse to issue a badge if the applicant fails to provide adequate evidence of residency. Given the amendments summarised above regarding eligibility under regulation 4(2)(f), we have also added a consequential amendment at regulation 8(2)(e) to provide local authorities with the grounds 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.

7.8 Principal 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 is because it needs to be clear to an enforcement officer that the badge is both real and valid. This would cover, for example, scenarios involving accidental damage or where a badge may have been deliberately tampered with in some way. It widens the power of the regulation, so that a badge should be returned not just when it is illegible, but when it has been damaged in such a way (e.g. security features tampered with) that its authenticity or validity is in doubt. Regulation 7(1) has also been amended, to allow for a replacement to be issued to the genuine holder in these circumstances, where appropriate.

7.9 Regulation 9(1)(f) allows 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. This was always the intention - the Chronically Sick and Disabled Persons Act 1970 states that "a badge may be issued to a disabled person..." However, in view of questions raised about residency, the amendment is intended to clarify, beyond doubt, that the intention is 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 a false representation, they could obtain more than one badge. In such a scenario, the regulatory change described here would enable recovery of the first issued badge. For the same reasons regulation 8(2)(f) has been added to

make it clear that an authority may refuse to issue a badge if the applicant already holds a current badge issued by another issuing authority.

7.10 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 contraventions. However, under civil parking enforcement, local authorities deal with parking contraventions by issue of Penalty Charges rather than prosecutions. The Government prefers this approach and would not favour badges being withdrawn for parking contraventions, which may be regarded as minor offences.

7.11 Under the amended regulation 9(2)(a), a badge can be withdrawn for one successful prosecution of a badge holder or third party, of:

- an offence under section 21(4B) of the Chronically Sick and Disabled Persons Act 1970 (this 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 (this covers misuse of a real badge or use of a fake/altered badge when the vehicle is parked); or
- dishonesty or deception committed under any other UK legislation in relation to the badge (which takes account of offences under, for example, the Fraud Act 2006, the Theft Act 1968, the Forgery and Counterfeiting Act 1981, etc).

7.12 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, before it can be withdrawn.

7.13 These "relevant convictions" are defined in new regulations 2(3) and 2(4) which replace the previous definition of a "relevant conviction".

7.14 To address any instance where a badge holder might attempt to sell (or gift) their badge, it will be possible to withdraw a badge, under the amended regulation 9(2)(b), where the holder has purported to "transfer" the badge to another person.

7.15 A consequential amendment to Regulation 8(2)(a) has been made to reflect the changes to regulation 9(2), described above. 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 an offence defined in regulations 2(3) and 2(4).

7.16 Appeals against badge withdrawal are covered by regulation 10. Regulation 10(4) is deleted as it merely stated the address to which an appeal should be sent. The address was already outdated and could change again in the future. We do not believe it is helpful to include such detail in regulations and propose, instead, to include this in guidance.

Raise the fee for the issue of a disabled person's badge

7.17 Regulation 6 raises the maximum fee that a local authority can charge for the issue of a badge from £2 to £10. The fee has been set at a maximum of £2 since 1983 and does not adequately cover the costs involved in issuing a badge. The fee is being raised, after consultation, to cover the costs of the new badge design (see below) and to cover administration costs more adequately.

7.18 Local authorities will be able to charge the higher fee of £10 for all badges issued with a start date of 1st January 2012. The new badge design will include a start date.

Prescribe the form of a badge

7.19 Regulation 11, and Parts IA, IIA and IIIA of the Schedule 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. It is being specified in Part IIIA in some detail to ensure that a common design is in use throughout England, as this will in turn enable badge holders to use the badge to park in any local authority area in line with the Act.

7.20 Misuse of badges by someone other than the badge holder is currently a common offence. The written information contained on the badge has been changed to clarify the correct use of a badge. Part IIIA 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, unless the issuing local authority is satisfied that the holder is not expected to live beyond six months from the date of issue, to ensure the badge holder can be identified if necessary. The standards for photographs outlined in Part IIIA are the same as those used for passports and driving licences.

- ***Consolidation***

7.21 The Department for Transport does not consider that these changes warrant a consolidation of the Principal Regulations.

8. Consultation outcome

8.1 There was strong support for these measures in both formal and informal consultations. Formal consultations were undertaken in 2008 and 2010. Responses to the 2010 consultation were invited from a number of interested parties - in particular:

- Disabled people and their representative groups;
- Parking enforcement officers and their representative groups or parent companies; and
- Local authorities, who both issue Blue Badges and enforce the scheme.

The full response report to the 2010 consultation is available on the Department's website at:

<http://www.dft.gov.uk/consultations/closed/2010-20/>

8.2 In relation to eligibility assessments, the 2010 consultation highlighted strong support from all groups for greater prescription from Government. Support from local authorities was 93% in favour and representative organisations 87% in favour. We have also conducted informal consultation with local authorities and mobility experts during the drafting of aspects of these amendment Regulations relating to independent mobility assessments.

8.3 In respect of the provisions on independent mobility assessments, the Government worked closely with local authorities, mobility experts and disabled groups through workshops, case studies and pilot studies. The outputs and conclusions of this work were included in revised non statutory local authority guidance. We also consulted disabled people's groups on the content of this guidance, which was issued to local authorities in June 2011.

<http://assets.dft.gov.uk/publications/blue-badge-scheme-local-authority-guidance/blue-badge-scheme-local-authority-guidance.pdf>

8.4 In respect of issuing/withdrawing badges, the Government held a workshop in 2009 with a wide range of local authorities to discuss problems with the scheme and potential solutions. A key conclusion was that the requirement for 3 relevant convictions before a badge could be withdrawn was a barrier to effective enforcement and needed to be removed. Following this, the 2010 consultation specifically asked for views on the advantages and disadvantages of removing the three relevant convictions requirement and whether there should be any additional grounds for refusing to issue, or for withdrawing, a badge. A clear majority of respondents favoured reducing the three convictions requirement and of those providing unambiguous responses over 80% saw advantages. Safeguards have been built into the drafting of the new regulation to reflect comments received. In respect of enforcement, this is the only policy change that has been effected by these regulations. The other amendments clarify the existing policy.

8.5 In relation to the badge fee, survey evidence suggested in 2008 that 68% of badge holders supported an increase in the current £2 fee, although there was no known evidence of the actual willingness to pay. When asked how much

they thought would be a fair price, 25% thought that it would be fair to charge more than £10 and 59% thought that it should be between £3 and £101.

8.6 With respect to the badge itself, responses to the 2008 consultation showed over 90% supported the implementation of a design that was harder to copy, forge and alter. Detailed workshops were held in 2009 and 2010 with local authorities to discuss and review options for a new design. We have also held regular discussions with disabled groups.

9. Guidance

9.1 The Department intends to issue guidance to local authorities on how to use the new powers provided by these regulations.

10. Impact

10.1 The impact on business is nil and although some people who benefit from charities and voluntary bodies will pay more for the badge, they will receive benefits from increased mobility, greater availability of parking spaces and financial concessions associated with the scheme.

10.2 The impact on the public sector is minimal.

10.3 An impact assessment in relation to the amendments is attached to this memorandum.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 We will monitor feedback on this SI through statistics and stakeholder discussion.

13. Contact

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¹ Research with Blue Badge holders: Final Report, DfT, October 2008