

EXPLANATORY MEMORANDUM TO
THE DISABLED PERSONS (BADGES FOR MOTOR VEHICLES) (ENGLAND)
(AMENDMENT) REGULATIONS 2019

2019 No. 891

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Transport (“the Department”) 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 (SI 2000/682) (the 2000 Regulations), explicitly extending the eligibility criteria for a disabled parking badge (Blue Badge) to people whose non-physical impairment impacts on their ability to walk during the course of a journey. These impacts are listed at the amended regulation 4(2)(f). The existing criteria for physical disabilities remain unchanged.

2.2 The instrument replaces “independent mobility assessor”, with provision for a broader range of appropriately qualified persons recognised as an ‘expert assessor’ (draft regulation 2(2)(a)), with appropriate professional expertise extending to non-physical impairments, to assess applicants on behalf of local authorities who may appoint them as part of exercising their responsibility for administering the Blue Badge Scheme.

2.3 The instrument (in Regulation 2(3)(a)), amends the current requirement at Regulation 4(2)(f) of the 2000 Regulations that the disability be “permanent and substantial”, changing it to “enduring and substantial”. This is because "enduring" is deemed more appropriate to encompass some non-physical conditions, such as mental or cognitive disabilities: these may be difficult to categorise as 'permanent' since they may vary over time, but endure nonetheless.

2.4 The instrument (in Regulation 3) contains a transitional provision to allow for any independent mobility assessor to be deemed an “expert assessor” for the purposes of any application already submitted and still pending when this instrument comes into force.

2.5 The previous definition of “independent mobility assessor” as inserted by Disabled Persons (Badges for Motor Vehicles) (England) (Amendment) (No.2) Regulations 2011/2675 reg. 2(2)(a)(iii) was as follows:

““independent mobility assessor” means a person (“person A”) who at the time of any assessment of another person (“person B”) for the purposes of the certification referred to in regulation 4(2)(f)—

(a) is recognised by the local authority to which the application for a disabled person's badge is being made as—

(i) holding a professional qualification, the obtaining of which involved person A being trained in the assessment of a person's ability to walk; and

(ii) having the expertise necessary to assess on behalf of the local authority the ability to walk of person B;

- (b) has never been employed or engaged as a provider of medical services to person B where “medical services” includes all forms of medical treatment and investigations to establish whether treatment is needed but does not include an assessment conducted to establish whether person B is eligible for services provided by a local authority (including the provision of a disabled person's badge); and
- (c) is not, in the opinion of the local authority, precluded by reason of personal or commercial relationship with person B from providing an independent assessment of person B's ability to walk;”

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England.
- 4.2 The territorial application of this instrument is England.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 By virtue of Section 21(1) of the Chronically Sick and Disabled Persons Act 1970, local authorities in England are responsible for the issue of Blue Badges to “disabled person[s] of any prescribed description resident in the area of the issuing authority for one or more vehicles ... used by [them] ...” (section 21(2)). Under Section 21(7) the description of ‘disabled person’ is to be prescribed by the 2000 Regulations.
- 6.2 This Instrument only applies in England. The Devolved Administrations have powers to make regulations amending their respective eligibility criteria.
- 6.3 This Instrument will come into force on 30th August 2019. This provides a three-month lead-in period to allow local authorities time both to assimilate the guidance on assessing applications relating to non-physical conditions, published by the Department on 31st May 2019, and to put necessary arrangements in place.

7. Policy background

What is being done and why?

- 7.1 The Blue Badge Scheme promotes equality for disabled people by helping them access employment, goods and services and other social activities. A Blue Badge

enables the holder to benefit from a range of parking concessions and exemptions from parking charges applying to other motorists.

- 7.2 Although the Department considers that people with non-physical disabilities are not currently excluded from receiving a Blue Badge, it had become clear through discussions with local authorities and from correspondence that the application of the Blue Badge Scheme to people with non-physical disabilities was not clearly understood or administered consistently across the country.
- 7.3 A problem arises from the original wording in the 2000 Regulations, which provide eligibility to those with: “a permanent and substantial disability which causes inability to walk or very considerable difficulty in walking” (see regulation 4(2)(f) of the 2000 Regulations). This does not specify whether the disability is physical or non-physical – and can therefore be either. However, there is confusion around the words “very considerable difficulty in walking” and whether this only means physical difficulty in putting one foot in front of the other or can include difficulties or challenges whilst walking, including safety risks, which may arise from non-physical disabilities. Some people with mental or cognitive impairments have therefore found it difficult to access a Blue Badge, despite their condition causing them significant difficulties in walking during the course of a journey.
- 7.4 Informed by the consultation discussed below (see paragraph 10), the instrument extends eligibility to explicitly include people who: are unable to walk; have very considerable difficulty whilst walking, including very considerable psychological distress; or who cannot undertake a journey without there being a risk of serious harm to that person or any other person.
- 7.5 Where an applicant’s eligibility for a Blue Badge is not self-evident, the 2000 Regulations have to date allowed for an “independent mobility assessor” who has a relevant professional qualification and expertise, to certify that the applicant has a disability which causes inability to walk or very considerable difficulty in walking. The assessor must hold a professional qualification which would enable them to assess a person’s ability to walk and be recognised by the local authority as having the necessary expertise.
- 7.6 This independent mobility assessor role, now defined as an ‘expert assessor’ under these amending Regulations, is being expanded to include the kind of professional who will be able to accurately and fairly assess the impacts of non-physical impairments on applicants’ ability to walk. However, such impacts may be difficult for an expert assessor to assess without having prior knowledge, possibly through having diagnosed or treated the applicant, of their non-physical impairments. Therefore the existing requirement for the assessor to be independent of the applicant may be difficult to satisfy in some cases, so is being left out of the new definition of ‘expert assessor’ in regulation 2(2)(a); and the requirement for their assessment to be independent is replaced with a requirement for it to be ‘impartial’ in regulation 2(2)(c).
- 7.7 This allows involvement of a wider range of health care professionals with specialist knowledge of mental, cognitive or learning disabilities and/or close knowledge of the applicant’s challenges and capabilities where appropriate. The instrument allows for more than one assessor to assess an applicant if more than one kind of specialist knowledge is appropriate. As now, General Practitioners are excluded from the

assessment process to preserve the integrity of the doctor/patient relationship by removing the potential for bias in favour of the applicant.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 A consolidation has not been undertaken by the present amending instrument.

10. Consultation outcome

- 10.1 A consultation ran for eight weeks, from 21st January to 18th March 2018, and the Department published its formal response on 29th July 2018 at: <https://www.gov.uk/government/publications/blue-badge-disabled-parking-scheme-eligibility-consultation-summary-of-responses-and-outcome>. The Department received a total of 6,349 responses from members of the public, local authorities, groups representing disabled people and other organisations. A total of 89% of respondents from all groups were, in principle, in favour of the proposals to amend the eligibility criteria, including 71% of local authorities, 84% of groups representing disabled people, 87% of other organisations and 89% of individuals.
- 10.2 One proposal was changed in light of advice from the Government's Disabled Persons' Transport Advisory Committee (DPTAC) and some local authorities, who disagreed with including automatic eligibility for people who, having been assessed under the Social Security (Personal Independent Payment) Regulations 2013 (SI 2013/377) (the 2013 Regulations), scored 12 points in relation to the 'Planning and Following Journeys' activity, against the criterion for being 'unable to follow the route of a familiar journey without another person, an assistance dog or an orientation aid'. The reason this proposal was opposed is that needing to be accompanied does not, in itself, equate to a need to park nearby or a difficulty getting from vehicle to destination. Instead, the Department agreed with DPTAC's suggestion to include an automatic entitlement to a Blue Badge for people who receive 10 points under the 'Planning and Following Journeys' activity of Personal Independence Payment specifically because they 'cannot undertake any journey because it would cause them overwhelming psychological distress' (see Schedule 1, Part 3, paragraph 1.e of the 2013 Regulations). This change should help ensure the sustainability of the Blue Badge Scheme by ensuring that badges are issued only to those people with the greatest need.

11. Guidance

- 11.1 The Department has worked with medical professionals and key stakeholders to develop the guidance on these regulatory changes that local authorities will need in order to be able to administer the Blue Badge Scheme when the changes come into effect. It is intended to publish the guidance as soon as possible after this instrument has been laid in Parliament and before it has come into force.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies. The Blue Badge Scheme only applies to on-street parking places for which local authorities have responsibility. It does not apply to off-street locations such as supermarket or hospital car parks or to any private car parks, where landowners or parking operators are subject to a separate obligation under the Equality Act 2010 to provide adequate parking spaces for disabled people.
- 12.2 An Impact Assessment has not been prepared for this instrument because there are no costs to business. Instead, a limited Assessment has been prepared as this instrument is likely to incur some cost to local authorities, although this cannot be accurately predicted at this stage.
- 12.3 The impact on the public sector is:
- 12.4 **Increased administrative cost.** It is not possible to accurately estimate the cost of these proposals. There are many unknown factors such as how many people with non-physical disabilities will meet the threshold of the expanded criteria, how many will choose to apply and their success rate. The only hard evidence the Department has is from what Scotland and Wales have already done. The changes there - whilst not as far reaching as these changes - have seen a rise in badges issued of less than 3% in those administrations.
- 12.5 To help roll out the policy in the first year, it has been agreed with the Ministry of Housing, Communities and Local Government that the Department will allocate its estimated administration cost of £1.7m, to assist local authorities with the increase in applications. After twelve months it will review the financial impact of the eligibility proposals and possible funding solutions in this wider context, in the light of hard data on the number of applications received in respect of non-physical disabilities of, including those that will be made on the new digital administration service that the Department is funding.
- 12.6 **Risk of greater abuse of the scheme with implications for enforcement.** Misuse of a Blue Badge (primarily by friends or family members) is already a criminal offence and some authorities will prosecute offenders. Others will use Penalty Charge Notices where appropriate. Enforcement is the responsibility of local authorities but the Department is taking steps to share examples of best practice to facilitate better enforcement. Appropriate steps to educate the public about the impact of this crime on vulnerable people will be considered as part of the implementation of the eligibility changes.
- 12.7 **Pressure on on-street parking spaces.** Consultees representing disabled people wanted to see more spaces provided. Local authorities were concerned that the proposals would increase the number of cars seeking to park in disabled parking spaces. It is clear that the impact on parking will vary from place to place, depending on many factors such as location, population density, current capacity, possible capacity, and more. Parking provision may need to be reviewed by local authorities when the eligibility changes have been in operation for an appropriate period and the impact is understood.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 In line with the requirements of the Small Business, Enterprise and Employment Act 2015 Jesse Norman made the following statement: “the 2000 Regulations do not include a statutory review clause and it is not appropriate to add to them any provision for review using this amending legislation either. There is no, or no significant, impact on business, charities or voluntary bodies associated with this instrument, and the annual cost to the public sector is unlikely to exceed £5 million. The Department will, after 12 months, further analyse the financial impact on local authorities of the expanded eligibility in the light of hard data on the number of applications received in respect of non-physical disabilities.”

15. Contact

- 15.1 The Department can answer any queries regarding the instrument at following email address: Blue.badge@dft.gov.uk.
- 15.2 Anthony Ferguson, Deputy Director for Parking & Blue Badge Policy, at the Department can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Jesse Norman at the Department can confirm that this Explanatory Memorandum meets the required standard.