EXECUTIVE NOTE

THE DISABLED PERSONS (BADGES FOR MOTOR VEHICLES) (SCOTLAND) AMENDMENT REGULATIONS 2011

SSI 2011/89

1. The above instrument is made in exercise of the powers conferred on the Scottish Ministers by section 21 of the Chronically Sick and Disabled Persons Act 1970. The instrument is subject to negative resolution procedure.

Policy Objective

2. A reform of the Blue Badge Scheme in Scotland is necessary to reflect the significant social changes that have taken place over the past 40 years since its introduction (as the Orange Badge Scheme) and to ensure the Scheme is administered efficiently, consistently and fairly.

3. Currently a person who drives a vehicle regularly, has a severe congenital impairment in both arms and is unable to operate, or has considerable difficulty in operating, all or some types of parking meter is eligible to apply for a badge. We wish to amend the Regulations to remove the word "congenital" thereby also allowing those who have acquired upper limb impairment in both arms, to apply for a badge.

4. The original intention behind the 2000 Regulations was to include those with limited mobility regardless of whether they receive the Higher Rate of the Mobility Component of the Disability Living Allowance (HRMCDLA). Applications for HRMCDLA are assessed by the Department for Work and Pensions (DWP). However, over time, applications for a Blue Badge from those not in receipt of HRMCDLA, such as those over 65, have been assessed differently. We wish to ensure that all applications should be assessed in the same way in order that the process is consistent. DWP require that the applicant is "unable to walk" or is "virtually unable to walk". A similar change will be required for those with a temporary disability.

5. The current criteria covers children under the age of 2 who due to a medical condition, need to be accompanied by bulky medical equipment at all times; or due to a medical condition must always be kept near a vehicle so that treatment can be given in the vehicle, or the child can quickly be transported to a place for treatment. Whilst people with serious temporary mobility problems can apply for the HRMCDLA, which facilitates the automatic award of a Blue Badge, it is only available to applicants aged 3 or over. This means that children who were eligible for a Blue Badge under the Bulky Medical Equipment / access to vehicle criteria, currently have no means of re-applying for a badge under similar automatic criteria for serious mobility problems until their third birthday. We wish to extend the eligibility criteria to children aged 3 and under.

6. We also wish to extend the descriptions of bulky medical equipment to include children with casts and associated medical equipment for the correction of hip dysplasia.

Consultation

7. The Scottish Government consulted on the reform of the Blue Badge Scheme, including the content of these Regulations through a formal public consultation between June and October 2010. Those consulted included local authorities, health boards, police boards and over 300 organisations, the majority of which were disability organisations.

8. We received 515 responses, 418 from individuals and 97 from individuals. The majority of the responses supported the changes that are being made to the Regulations. These included tightening up and extending eligibility criteria and improvements to the security of badges.

Financial Effects

9. The Scottish Government do not believe that implementation of the Regulations will impose significant costs on local authorities or to individuals. A copy of the Business Regulatory Impact Assessment is attached below.

Transport Scotland
February 2011

BUSINESS AND REGULATORY IMPACT ASSESSMENT

Title of Proposal

1. The Disabled Persons (Badges for Motor Vehicles) (Scotland) Amendment Regulations 2011.

Purpose and intended effect

Objectives

2. The Scottish Government is seeking to ensure the Blue Badge Scheme is administered efficiently, consistently and fairly.

Background

3. Currently a person who drives a vehicle regularly, has a severe congenital impairment in both arms and is unable to operate, or has considerable difficulty in operating, all or some types of parking meter is eligible to apply for a badge. We are amending the Regulations to remove the word "congenital" thereby also allowing those who have acquired upper limb impairment in both arms, to apply for a badge.

4. The original intention behind the 2000 Regulations was to include those with limited mobility regardless of whether they receive the Higher Rate of the Mobility Component of the Disability Living Allowance (HRMCDLA). Applications for HRMCDLA are assessed by the Department for Work and Pensions (DWP). However, over time, applications for a Blue Badge from those not in receipt of HRMCDLA, such as those over 65, have been assessed differently. We wish to ensure that all applications should be assessed in the same way in order that the process is consistent. DWP require that the applicant is "unable to walk" or is "virtually unable to walk". A similar change will be required for those with a temporary disability.

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6. We also wish to extend the descriptions of bulky medical equipment to include children with casts and associated medical equipment for the correction of hip dysplasia.

Rationale for Government intervention

7. The Scheme needs to be brought up-to-date to ensure that it is still relevant, at the same time we need to make the Scheme more secure to prevent the high levels of misuse of the badge. We need to extend the current eligibility criteria to bring it in line with changes made south of the border several years ago.

8. There are currently around 274,000 badges in circulation in Scotland an increase of over 13,000 within a year. This exponential increase will soon no longer be sustainable with Blue Badge holders being unable to park in disabled spaces.

9. The distribution of badges across the country highlights the need for more consistency in assessing applicants. More defined criteria should ensure that those in most need of a badge are able to have one.

Consultation

With Government and Public Sector

10. In June 2009 the Scottish Government set up a Blue Badge Reform Working Group to consider how the Scheme can be improved. The Working Group consists of social welfare and traffic management representatives from local authorities, the British Parking Association, the NHS, the Mobility and Access Committee for Scotland and colleagues from the Primary Care and Local Roads Divisions. The Working Group suggested that changes need to be made to the Scheme in relation to:

- those who are eligible;
- the assessment of the eligibility criteria;
- the enforcement of the Scheme;
- the design of the badge;
- the administration of the Scheme; and
- the provision of information on the Scheme.

Public Consultation

11. The Scottish Government consulted on the reform of the Blue Badge Scheme, including the content of these Regulations through a formal public consultation between June and October 2010. Those consulted included local authorities, health boards, police boards and over 300 organisations, the majority of which were disability organisations.

12. During the consultation we asked **"*Do you agree that we should amend the definition of 'unable to walk or has considerable difficulty walking' so that it is consistent with that used for the Higher Rate of the Mobility Component of the Disability Living Allowance Assessments?*"**

13. In response to the question, 505 responses were received, 416 from individuals (305 in favour), and 90 from organisations (62 in favour). The overall response to this proposal was positive with 367 consultees in favour, 124 against and 14 not indicating a clear preference for or against the proposal.

14. Consultees were invited to explain why they disagreed with the proposals. A recurrent concern was that the phrase "*unable to walk or has considerable difficulty walking*" used for the assessment of the Higher Rate of the Mobility Component of Disability Living Allowance (HRMCDLA) relates to physical disability and precludes those who are mobility impaired due to conditions which are not primarily physical.

15. Some consultees were concerned that applicants with heart disease, Parkinson's disease, mental health conditions, and Cystic Fibrosis would no longer be eligible. However, they are not eligible under the current scheme, unless they meet the existing criteria for example if they receive HRMCDLA or are unable to walk.

Options

16. There are three options which have been considered for reforming the Blue Badge Scheme:

Option 1: Do Nothing

Benefits

17. There are few benefits relating to this option as it would mean that we would continue to be out of step with the Schemes in England and Wales for those with severe congenital impairment in both arms and for children with hip dysplasia. These changes were made south of the Border in 2007. We have been informed that the changes to increase the children under the age of 2 criteria will be introduced south of the Border on 01 April 2011; again Scottish applicants would be disadvantaged.

Costs

18. Local authorities may argue to do nothing could have a negative effect on the amount of income they receive from parking.

Option 2: Make some changes to secondary legislation now and others later in the year.

Benefits

19. The proposals as drafted would bring the Scottish Scheme in line with the Schemes in England and Wales for those with severe congenital impairment in both arms and for children with hip dysplasia. Increasing the age of children to 3 from 2 would remove the anomaly whereby children over 2 and under 3 that previously met the under 2 criteria would have no means of re-applying for a badge under similar automatic criteria for serious mobility problems until their third birthday. The timescale for the change to extend the age of children with bulky medical equipment from 2 to 3 would be in line with the changes being made south of the Border. Leaving separate legislation to the changes to the badge design until the autumn would allow more time to fully test and design the new badge before defining its features in legislation.

Costs

20. We do not expect a significant increase in costs to local authorities as a result of these proposals.

Option 3: Make all required changes to secondary legislation later in the year.

Benefits

21. As above, however Scottish applicants would be further disadvantaged by a delay in these Regulations.

Costs

22. We do not expect a significant increase in costs to local authorities as a result of these proposals.

Scottish Firms Impact Test

23. It is not expected that these proposals will have an impact on Scottish Firms.

Legal Aid Impact Test

24. It is not expected that these proposals will have an impact on use of the legal aid fund.

Enforcement, sanctions and monitoring

25. Enforcement of the Blue Badge Scheme is carried out by the police, police traffic wardens and parking attendants under powers set out in the Chronically Sick and Disabled Persons Act 1970.

26. The Court has the power to prosecute anyone for misuse of the badge. Under Regulations 8 and 9 of the Disabled Persons (Badges for Motor Vehicles) (Scotland) Regulations 2000 an authority can refuse to issue a badge or request the return of a badge where an applicant has received at least three relevant convictions resulting from the misuse of the badge.

27. The Scottish Government publishes statistics on the number of badges in circulation in its annual are a report which will assess the effects of the Directive, as well as the need for further action or proposals if necessary. In addition, the Commission will, no later than the date of the first report, examine the options for compliance and propose necessary amendments if necessary.

Implementation and delivery plan

Ownership

28. Who is responsible for implementation? **Transport Scotland**

29. Who should enforce the policy? **Local Authorities**

Implementation

30. Will implementation go beyond minimum EU Requirements? **No**

Implementation milestones

31. The Regulations will be laid in Parliament in January 2011 with a coming into force date of 01 April 2011.

Guidance for Stakeholders

32. We are currently drawing up two documents for local authorities: a 'Code of Practice' and 'Guidance for Assessors'. Both documents will be issued to local authorities in advance of the Regulations coming into effect.

Summary and recommendation

33. The proposed Regulations will ensure that there are robust and workable eligibility criteria and that the fees that can be applied by local authorities are set out in legislation.

34. In view of the above, it is recommended that the Regulations are introduced into Scottish Law.

Declaration and publication

35. I have read the impact assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

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Signed KEITH BROWN

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