EXPLANATORY MEMORANDUM TO

THE DISABLED PERSONS' PARKING BADGES (SCOTLAND) ACT 2014 (CONSEQUENTIAL PROVISIONS) ORDER 2016

2016 No. XXXX

1. Introduction

1.1 This explanatory memorandum has been prepared by the Scotland Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This Order is made in consequence of the Disabled Persons' Parking Badges (Scotland) Act 2014 ("the 2014 Act"), which makes provision about badges for display on motor vehicles used by disabled persons. The purpose of this Order is to ensure that: throughout Great Britain, the same rules apply for the purpose of determining whether a blue badge issued in Scotland is in valid form; and, that the cancellation of a blue badge by a local authority in Scotland should also be effective in England or Wales. Finally, the Order also amends a cross-reference to a local authority in the Chronically Sick and Disabled Persons Act 1970 ("the 1970 Act").

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland.

4. Legislative Context

4.1 This Order is to be made in exercise of the powers conferred by sections 104, 112 and 113 of the Scotland Act 1998 ("the 1998 Act"). Section 104 of the 1998 Act provides for subordinate legislation to be made by the UK Government, which contains provisions that are necessary or expedient in consequence of any provision made by, or under, an Act of the Scottish Parliament. In this case, provision is required in consequence of provision made by the 2014 Act, which received Royal Assent on 24th September 2014. The Order is subject to affirmative resolution procedure in the UK Parliament.

4.2 The Order extends to the law of England and Wales the effect of certain amendments made by the 2014 Act to section 21 of the 1970 Act, which provides for badges to be issued to disabled people entitling them to parking concessions.

4.3 Section 1 of the 2014 Act changes the rules about the form a badge issued in Scotland must take if it is to be recognised as a valid badge. Badges issued in Scotland are recognised in England and Wales. This Order substitutes paragraph (b) of subsection (1A) of section 21 of the 1970 Act so that throughout Great Britain the same rules apply in relation to the validity of a badge issued in Scotland..

4.4 Section 2 of the 2014 Act provides that Scottish local authorities are able to cancel badges which they have issued in certain circumstances. To give the 2014 Act full effect and ensure consistency, the Order amends subsection (7AB) of section 21 of the 1970 Act so that the cancellation of a badge by a Scottish local authority is also effective in England and Wales.

4.5 Finally, the Order amends a cross-reference to a local authority in subsection (8C) of section 21 of the 1970 Act. The 2014 Act inserted the Scots law definition of an enforcement officer into section 21(8A) of the 1970 Act. This definition included duly appointed employees or agents of local authorities. Section 21(8C) of the 1970 Act says that all references to local authorities in section 21 should be read as including the Secretary of State, subject to exceptions. Subsection (8A) is not one of the exceptions. Article 4 amends section 21(8C) to make clear that wherever in section 21 there is a definition of an enforcement officer, references in that definition to a local authority should not be read to include the Secretary of State.

5. Extent and Territorial Application

5.1 Article 3 extends to England and Wales.

5.2 Articles 1, 2 and 4 extend to England and Wales and Scotland.

5.3 The territorial application of this instrument is England and Wales and Scotland.

6. European Convention on Human Rights

6.1 The Secretary of State for Scotland, the Rt Hon David Mundell MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Disabled Persons' Parking Badges (Scotland) Act 2014 (Consequential Provisions) Order 2016 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 One of the main aims of the 2014 Act is to help tackle blue badge misuse by providing additional powers to local authorities and the police to enforce the blue badge scheme in Scotland. The 2014 Act strengthens enforcement powers, including the ability to cancel or confiscate a badge in certain circumstances, and provides for security features of the blue badge format to be approved administratively by the Scottish Ministers.

7.2 The Order ensures consistency throughout Great Britain with regard to the validity of blue badges issued in Scotland and gives full effect to the 2014 Act.

Consolidation

7.3 This Order stands alone.

8. Consultation outcome

8.1 No formal consultation has taken place on the Order; Orders taken forward under section 104 of the 1998 Act are not usually consulted on as they are made in consequence of Acts which have previously been the subject of separate consultation exercises.

8.2 Although there has been no public consultation specific to the terms of this Order, the Department for Transport, which has responsibility for the legislation which this Order affects, has been consulted during the drafting of this Order. All provisions contained in this Order have the approval of the Department for Transport and the Scottish Government.

8.3 With regard to wider consultation, Dennis Robertson MSP ran a public consultation from 18th December 2012 to 28th March 2013 on the proposals to be contained in his Member's Bill to strengthen the Blue Badge Scheme enforcement powers, including powers to cancel and confiscate badges in certain circumstances, and to provide an appeals process for applicants when their Blue Badge application is refused on eligibility grounds.

8.4 The consultation was published on the Scottish Parliament's website and copies or links to it were sent to a wide range of stakeholders including local authorities, the police and voluntary sector organisations. 81 responses were received. 43 of these were from individuals, and the remaining 38 came from organisations. Copies of responses are available at http://www.dennisrobertsonmsp.net/parliament-debates/members-bill/ However, there was widespread support for the general aim of the Bill to provide better enforcement. An analysis of the responses received can be viewed at http://www.scottish.parliament.uk/S4_MembersBills/consultation_responses_dennis_robertson.pdf

8.5 Following consideration of the responses to the above consultation, Dennis Robertson MSP secured the right to introduce his Member's Bill. That Bill was introduced to the Scottish Parliament on 17th December 2013 and made proposals to strengthen the Blue Badge Scheme enforcement powers, including cancellation and retention of badges in certain circumstances; to provide for elements of the format of a Blue Badge to be approved administratively and to allow people refused a Blue Badge on eligibility grounds to seek a review of the decision.

8.6 Before and during the parliamentary process, Transport Scotland engaged with a multi-agency group to bring forward new and focussed ways to educate badge holders with the aim of improving compliance and reducing inadvertent misuse. This group helped to shape the legislative proposals and the Bill passed through each of the stages of the Scottish Parliamentary process without amendment before being given Royal Assent on 24 September 2014.

9. Guidance

9.1 This Order stands alone, guidance is not necessary.

10. Impact

10.1 This instrument has no impact of a regulatory nature on the private sector or civil society organisations and will not impose or reduce costs.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.

11. Regulating small business

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

12. Monitoring & review

12.1 The effect of this Order is purely consequential. It does not create new policy or frameworks and, therefore, no monitoring or review of the effects of this Order are required.

13. Contact

13.1 Rachel Irvine at the Scotland Office (telephone: 0207 270 6800 or email: rachel.irvine@scotlandoffice.gsi.gov.uk) can answer any queries regarding the instrument.