



## Report on the Legislative Consent Memorandum for the Disabled Persons Parking Badges Bill

### *Background*

1. The Disabled Persons' Parking Badges Bill<sup>1</sup> is a Private Member's Bill that was introduced in the House of Commons on the 20 June 2012 by Simon Kirby MP (Brighton Kemptown, Conservative). The Bill was given a Second Reading without debate on the 6 July 2012 and will proceed to Committee Stage in the House of Commons on the 5 September 2012, when amendments may be considered. The detailed background to the Bill can be found in paragraphs 4-16 of the Explanatory Notes to the Bill.

2. The Bill would change the law in different ways in different parts of the UK. This is explained in the Explanatory Notes that accompanied it on introduction in the Commons as follows –

#### ***“Territorial Extent***

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

*17.1 clauses 1 to 4 apply to Wales and make substantive changes to the law in Wales. They are therefore subject to the passing of a Legislative Consent Motion in the Welsh National Assembly;”*

3. On the 10 July 2012, the Minister for Local Government and Communities laid an LCM<sup>2</sup> for the Disabled Persons Parking Badges Bill, currently before the UK Parliament.

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<sup>1</sup> Available at: <http://services.parliament.uk/bills/2012-13/disabledpersonsparkingbadges.html>

<sup>2</sup> Available at: <http://www.assemblywales.org/bus-home/bus-business-fourth-assembly-laid-docs.htm?act=dis&id=236308&ds=7/2012>

4. The LCM was considered on the 17 July 2012 by the Business Committee, who agreed, in accordance with Standing Order 29.4, to refer it to the Communities, Equality and Local Government Committee, to consider and report on the relevant provisions by the 1 November 2012. The motion is due to be considered in plenary in the autumn term.

#### *Our view*

5. The Committee notes the purpose of the Bill is generally to reduce abuse of the blue badge scheme by amending the relevant provisions in section 21 of the Chronically Sick and Disabled Persons Act 1970 and section 117 of the Road Traffic Regulation Act 1984. The Committee also notes that the Bill does not seek to change the criminal law in relation to the misuse of badges and the penalties applicable for doing so.

6. The Committee notes that there are clear advantages in seeking consistency in the application of the scheme in England and Wales.

7. The Committee wrote to Disability Wales to seek their views on the Bill and their response is attached to this report. Disability Wales have raised concerns on certain aspects of the Bill and the Committee recommends that these issues are considered by the Minister. The Committee would like the Minister to specifically look at the issue of a warning being given to badge holders before a badge is cancelled/removed by a local authority.

8. Accordingly, we have no objection to the use of an LCM as proposed by the Welsh Government.

Dear Mark Isherwood AM,

## **Re: Disabled Persons' Parking Badges Bill / Legislative Consent Memorandum.**

Disability Wales welcome measures to reduce blue badge misuse and we are aware that misuse is an ongoing issue. However we do have some concerns. Comments below relate to specific paragraphs contained in the Legislative Consent Memorandum document.

Paragraph 5.2, Will council staff with the authority to inspect blue badges have appropriate knowledge of disabled people and will they undergo any Disability Equality Training carried out by suitably qualified disabled people?

Paragraph 5.3, Giving power to local authorities to recover badges in 'certain circumstances' when they are being misused. Disability Wales doesn't agree that the blue badge should be taken away at the first instance because it could leave a disabled person whose badge is being used in detriment, it could be the case that due to their impairment, they may not know that the badge is being misused, a warning should be given first.

'Certain circumstances' need to be adequately defined to ensure that all local authorities have the same certain circumstance to avoid confusion and unfairness.

Paragraph 5.4, proposals to make it an offence to use blue badge that should be returned to issuing authority. Similar to the above paragraphs. The Welsh Government could criminalise disabled people needlessly. Due to disabled people impairments they may not know the badge has to be returned. Will the notice of the blue badge to be returned available in accessible formats?? Will the blue badge holders' access requirements be met? Or is there a one cap fits all

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procedure? Also, it has to be clear who would be the 'offender' the blue badge holder or their Personal Assistants/ Carers?

This links to Paragraph 6.6., 6.8, also – criminalising disabled people needlessly. Paragraph 6.6 and 6.8, to make it offences to drive a vehicle on the road with a cancelled blue badge and making it an offence to drive with a blue badge that should have been returned to the issuing authority. Would a Personal Assistant driving / parking the vehicle receive a criminal record or would the disabled person they are assisting receive a criminal record? What happens if the blue badge holder doesn't realise their blue badge has been cancelled? Clarity is required similar to Paragraph 5.4.

Paragraph 6.4, Caution is required re the removal of lost or stolen blue badges. Due to a disabled person's impairment they may not realise the badge is lost or stolen, (and could possibly be a case of 'mate crime'). Therefore cancelling the badge would make it very difficult for the blue badge holder to apply for another blue badge. Also, define 'any other reason' – what does this mean? – This phrase is too ambiguous. Also relating to Paragraph 6.4, How would it appear to the local authority that the disabled person who was issued the badge no longer has it? How will they check this?

Paragraph 6.10, Blue badges to be inspected by local authorities – will the inspection staff be adequately trained in Disability Equality? Some disabled people could feel traumatised and bullied if a plain clothed Enforcement Officer i.e. not an easily identifiable official, asks to inspect the badge. This is especially so if, due to the nature of their impairment, a disabled person were unable to understand the enforcement staff request. Will there be inspection guidelines and communication training for the plain clothed council staff and uniformed inspectors?

Links to Paragraph 6.12, - Criminalising disabled people if they do not comply with Enforcement Officers – if a disabled person does not understand the Enforcement Officer, or has an impairment such as Autism which could make it difficult to interact with others, are they then criminalised? What about Enforcement Officers lack of understanding of disability – will this be addressed, if so how? Attitudinal

barriers are a real threat to independent living, along with physical barriers and communication barriers, an Enforcement Officers personal experience, or lack of experience of disability could lead to a disparity between officials behaviour towards blue badge holders. How will consistency of fair treatment of blue badge holders be monitored and maintained?

Paragraph 6.14, seizing a blue badge may cause the true blue badge holder undue stress and detriment, thus could make their impairment a lot worse. A warning should be given, in an accessible manner, in the first instance. Immediate withdrawal is not fair, will Police Officers and Enforcement Officers have adequate knowledge of disability to communicate with all blue badge holders and will they have the 'appropriate' i.e. knowledgeable and understanding attitude – this needs to be addressed.

Paragraph 6.16, Imposing of any time limit has to be flexible because disabled people may need extra time for them to give back badges. This is especially true if the instructions to do so are conveyed in an inaccessible manner. Provision of inaccessible information could lead to misunderstanding through no fault of the disabled person; it would be the Local Authorities fault for the delay caused. There should be an opportunity available for disabled people appealing their blue badge withdrawal decision to keep their badge pending the appeals process. At the moment it is very difficult to appeal against a blue badge eligibility decision.

Please see appendix A Disability Wales response to blue badge consultation: **Changes to the Blue Badge Scheme in Wales - Written in October 2011.** Note especially Page 9 – Page 15, Question 5 – Question 11, which focuses on Enforcement and Removal of Blue Badges.

Yours Sincerely,



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## Changes to the Blue Badge Scheme in Wales Response Form

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Do you want your response to remain confidential?

Yes

No

### Badge Fee

#### Question 1

What would be a reasonable charge for a Blue Badge?

- a). £5.50 which will cover the cost of the badge and data-sharing system only;
- b). £7.50 which will cover the cost of the badge and data-sharing system and contribute £2.00 to the administrative costs of the local authority (as is the case now), or
- c). £10.00 which will cover the cost of the badge and data-sharing system and help to cover most of the administration costs of the local authority.

A, B and C are all unreasonable. It is Disability Wales' view that blue badges should be provided free of charge in line with reasonable adjustments. Reasonable adjustments should be made regardless of disabled people's financial means, and adjustments are required by law under the Equality Act 2010.

Public Sector Equality Duties came into force on 5th April 2011.

The public sector Equality Duty, at [section 149](#) of the Equality Act 2010, requires public bodies to consider all individuals when carrying out their day to day work – in shaping policy, in delivering services and in relation to their own employees. It requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity, and foster good relations between different people when carrying out their activities.

The Equality Duty supports good decision making – it encourages public bodies to understand how different people will be affected by their activities, so that their policies and services are appropriate and accessible to all. By understanding the effect of their activities on different people, and how

inclusive public services can support and open up people's opportunities, public bodies can be more efficient and effective. The Equality Duty, therefore helps public bodies to deliver the Government's overall objectives for public services.<sup>1</sup>

In short, local authorities have a general duty under the Equality Act 2010 to advance equality of opportunity thereby removing / minimising the disadvantages experienced by those who share a protected characteristic, in this instance 'disabled people'.

The aim of the UK general duty is to ensure that public authorities and those carrying out a public function consider how they can positively contribute to a fairer society through advancing equality and good relations in their day-to-day activities.

Public bodies are required to have due regard to the need to:

1. eliminate unlawful discrimination, harassment and victimisation and other conduct that is prohibited by the Act
2. advance equality of opportunity between people who share a relevant protected characteristic and those who do not
3. foster good relations between people who share a protected characteristic and those who do not.

Specific duties in Wales came into force 6<sup>th</sup> April 2011

One key duty in relation to blue badge eligibility includes the requirement to assess impact. This means that listed bodies must consider relevant evidence in order to understand the likely or actual effect of policies and practices on protected groups.

This includes:

- ensuring the policy or practice does not unlawfully discriminate
- identifying any adverse impacts on protected groups
- considering how the policy or practice could better advance equality of opportunity
- considering whether the policy will affect relations between different groups.

Having considered this, listed bodies must have 'due regard' (i.e. give appropriate weight) to the results of such assessments. This requires listed

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<sup>1</sup> <http://www.homeoffice.gov.uk/equalities/equality-act/equality-duty/>

bodies, where possible, to consider taking action to address any issues identified, such as addressing negative impacts.<sup>1</sup> For example the negative impact of charging an administration fee for blue badge ownership and the negative impact of the implementation of parking charges for blue badge holders.

**Question 2** Are there any other related points that you would like to make regarding the Blue Badge fee?

Blue badge provision should be free of charge on the grounds that they are a reasonable adjustment and paying a fee for a blue badge, no matter how nominal, constitutes a tax on disability.

We believe that blue badges are a necessity not a luxury commodity. Disabled people require blue badges to access shops and services and have to be able to park closer to these outlets in order to do so.

At a time of welfare reforms from the UK Government when disability benefits are being reduced, more disabled people will be pushed further into poverty. Charges for the badge administration will be a further barrier for those with limited funds available. Local authorities are implementing parking charging policies at a time where disabled people will have less money due to the welfare reforms and substantial benefit cuts, but at the same time are expected to pay more. It is worth noting that Wales has the highest number of people claiming Disability Living Allowance<sup>2</sup>

In Wales, more than a third of disabled adults live in poverty and 70% of families with disabled children have a low income.<sup>3</sup> Most of the 22 local authorities in Wales are already charging or are proposing to charge blue badge holders to park in council owned car parks. Income generation is becoming local authorities' prime concern as central government is slashing budgets received by local authorities. Therefore local authorities' budget shortfalls have to be recouped by other means. Many local authorities

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<sup>1</sup> Equality and Human Rights Commission  
[http://www.equalityhumanrights.com/uploaded\\_files/Wales/PSED\\_Wales\\_docs/4\\_assessment\\_of\\_impact\\_bk.doc](http://www.equalityhumanrights.com/uploaded_files/Wales/PSED_Wales_docs/4_assessment_of_impact_bk.doc)

<sup>2</sup> Equality Issues in Wales: a research review. EHRC 2009  
[http://www.equalityhumanrights.com/uploaded\\_files/research/11\\_equality\\_issues\\_in\\_wales\\_-\\_a\\_research\\_review.pdf](http://www.equalityhumanrights.com/uploaded_files/research/11_equality_issues_in_wales_-_a_research_review.pdf)

<sup>3</sup> Rights of way: Changing society in the age of the UN Convention on the Rights of People with Disabilities. Equality and Human Rights Commission. March 2010  
<http://www.equalityhumanrights.com/wales/publications/rights-of-way/>

believe that by charging blue badge holders to park in council owned car parks funding deficits will be reduced.

In the UK the unemployment rate amongst the non disabled population is increasing. Across Britain, the employment rates of disabled adults are very low with only around 50% employed compared to 79% of non-disabled adults (a difference of nearly 30% in employment rates).<sup>1</sup> The employment rate discrepancy, together with welfare reform and benefit uncertainty, highlights the importance of not charging a fee for blue badges due to disabled peoples' financial constraints.

Similarly, imposing a charge for blue badge holders to park in council run car parks will create an additional financial barrier and will limit disabled people's opportunity to participate fully in the community.

Disabled people who live with physical and/or sensory impairments experience great difficulty in accessing shops and services in comparison to non-disabled people. The ability to park free of charge in council owned car parks provides great assistance and helps to alleviate the difficulties experienced by many disabled people.

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<sup>1</sup> How fair is Britain? Equality, Human Rights and Good Relations in 2010 - The First Triennial review  
[http://www.equalityhumanrights.com/uploaded\\_files/triennial\\_review/how\\_fair\\_is\\_britain\\_-\\_complete\\_report.pdf](http://www.equalityhumanrights.com/uploaded_files/triennial_review/how_fair_is_britain_-_complete_report.pdf)

## **Determining Eligibility**

**Question 3** Could you please score the six options outlined in the document for assessing eligibility against the objectives that the assessment process need to meet. A scale of 1 – 5 is being used (as described below) to decide how each option meets the key objectives. Please score each option against each objective in the table below using the following scoring system;

**1 - Does not meet the objective**

**2 - Meets part of the objective**

**3 - Neutral or no opinion**

**4 - Meets most of the objective**

**5 - Meets the objective**

Succinctly, Disability Wales agrees with the Welsh Government's initial proposal to broaden the blue badge eligibility criteria, thus, increasing the number of disabled people who can qualify and apply for blue badges.

To point out that this matrix is very complex and difficult to understand the scoring system which may have deterred some of our members from responding to this consultation.

This is very difficult question for Disability Wales to answer because Disability Wales are against imposing any fee for administration of blue badges at all and support eligibility assessments that do not adversely affect current blue badge recipients / potential blue badge recipients. Assessments, although necessary, are in line with the medical model of disability. Disability Wales are opposed to the medical model and unequivocally support the social model of disability. Any assessments have to be carried out by appropriately qualified people who have a robust impairment specific knowledge of disability. (See additional comments in question 4.)

Some of the headings are ambiguous: e.g. 'does it provide value for money?' Monetary value for whom? - The Welsh Government, local authorities or disabled people? Indeed differing perspectives conflict for most of the given options therefore making the allotted scoring system complicated.

<b>OPTIONS</b>	Can eligible applicants be accurately identified?	Is decision making consistent and fair?	Will it provide an efficient service and minimise duplication?	Is it feasible?	Is it deliverable?	Is it acceptable to service providers?	Is it acceptable to customers?	Does it provide value for money?
1. Do Nothing	<b>3</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>5</b>	<b>1</b>
2. Do the Minimum	<b>3</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>5</b>	<b>1</b>
3. Self Assessment	<b>3</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>5</b>	<b>2</b>
4. Independent Clinical / Functional Assessment	<b>3</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>1</b>
5. Desk Based Assessment with Support	<b>1</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>1</b>
6. Structured Interview Assessment	<b>1</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>1</b>

**Question 4** Are there any other comments you wish to make regarding the assessment process?

It is crucial that assessors undergo rigorous Disability Equality Training (DET) conducted by suitably qualified disabled people. Other vital training includes Impairment specific training. DET content consists of the following: Acceptable disability terminology in line with the social model of disability. Discussion of the difference between the social model of disability and the medical model and identifying barriers disabled people face and ways in which to eradicate those barriers etc. Undergoing DET will enable the assessors to understand the barriers disabled people encounter; thus enabling professionals to assess blue badge eligibility more effectively.

The fluctuating nature of mental health conditions and other impairments must be taken into account by professionals assessing blue badge eligibility recognising that the effect of impairment can change day to day.

Assessments should be designed so that the negative effect of assessment process itself is minimised. The family GP, for example, may know more about the medical history of the disabled person applying for a blue badge, the disabled person would be familiar with their GP thus stress and upset caused by the assessment process could be limited. An assessment in familiar surroundings carried out by people known to the potential blue badge recipient is essential. Many disabled people would find this type of assessment less daunting than being assessed by strangers in an unfamiliar environment.

## Enforcement

**Question 5** Are there any other situations where the local authority should be able to cancel a Badge?

Blue badges should only be cancelled as a last resort or if a blue badge owner has died. Before any decision to cancel a blue badge is made a full equality impact assessment (analysis) should be carried out. For example, what is the impact / effect on blue badge recipients if their blue badge is withdrawn? If the effects are detrimental then the threat of cancelation should be halted.

Any decisions should be made by professionals who have undergone rigorous Disability Equality Training and have knowledge of barriers effecting disabled people. Any such training should be reviewed regularly and conducted on a rolling basis.

See question 1 regarding the Welsh Specific Public Sector Equality Duties. One key duty in relation to blue badge eligibility includes the requirement to assess impact. This means that listed bodies must consider relevant evidence in order to understand the likely or actual effect of policies and practices on protected groups.<sup>1</sup>

**Question 6** Should it be an offence to not return a blue badge when required?

Yes

No

Blue badge holders may dispute reasons for blue badge recalls; therefore, they should not have to give up the blue badge when the investigations are ongoing.

Criminalising blue badge holders or their families is a bit extreme especially since blue badge holders and / or their families are unaware of the obligation to return blue badges in certain circumstances.

However, Disability Wales accepts that failure to return blue badges is a problem many local authorities face. The question is too stringent with little room for flexibility.

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<sup>1</sup> Equality and Human Rights Commission  
[http://www.equalityhumanrights.com/uploaded\\_files/Wales/PSED\\_Wales\\_docs/4.\\_assessment\\_of\\_impact\\_bk.doc](http://www.equalityhumanrights.com/uploaded_files/Wales/PSED_Wales_docs/4._assessment_of_impact_bk.doc)

**Question 7** In what circumstances should authorised council officers have the right and powers to seize (confiscate) Badges? (Please tick as many as appropriate)

Circumstance	Yes	No
An original Badge is being used which has been reported lost or stolen and for which a replacement has been issued	✓	
Badge holder has died	✓	
The Badge is more than 1 month out of date		✓
The Badge had been tampered with i.e. date changed	✓	
The Badge details cannot be read i.e. text has faded		✓
A Badge that any UK council has requested to be returned to them for whatever reason		✓
Use of an invalid Badge i.e. copy	✓	
Person other than the Badge holder using the Badge for obtaining a concession provided to genuine Badge holders		✓
A person offering for sale a Blue Badge	✓	

Issues to consider regarding the list above, many of the statements are not clear cut.

An original badge is being used which has been reported lost or stolen and for which a replacement has been issued – In theory yes, however, the badge may have been found and due to the holders impairment they are still carrying on using the old badge innocently.

The badge is more than 1 month out of date. Renewal reminders information may not always be sent to holders in accessible formats therefore holders may not know the badge is out of date

because they are unable to access the information through no fault of their own. Or perhaps their impairment has prevented them from renewing the badge or the cost of the blue badge administration is beyond the affordability of the holder.

The badge had been tampered with i.e. date changed – yes, however, the holder’s impairment may have meant that they have changed the date unknowingly.

The badge details cannot be read i.e. text has faded – yes in theory, however some blue badge holders may not be aware the text is illegible due to their impairment.

A badge that any UK council has requested to be returned to them for whatever reason. Reasons have to be made clear. ‘For whatever reason’ is ambiguous. Some reasons may be open to dispute or interpretation therefore any request for blue badge return must not be vague and inflexible. At the moment blue badge eligibility can and very often does vary between local authorities let alone countries, England, Scotland, Wales and Northern Ireland, therefore any national recall claim has to be robustly investigated.

Person other than the badge holder using the Badge for obtaining a concession provided to genuine Badge holders – in theory yes however the other person may be on an errand on behalf of the holder and may be alone because the holder is unable to accompany them on the journey that day due to the impairment worsening therefore time could be of the essence.

**Question 8** What would be the most effective ways of removing cancelled badges from circulation?

Hold a blue badge amnesty at local council offices throughout Wales or sending cancelled blue badges to council offices by free post mail. Encourage all those who have cancelled blue badges to return them safe in the knowledge that there would be no repercussions.

After the amnesty each local authority could send a reminder to holders of cancelled blue badges that they have to be removed from circulation, encourage them to do so and to notify the local authority if the badge has already been handed in.

Make disposal of blue badges easier, accessible and more cost effective e.g. avoid unnecessary journeys having to be made just to dispose of an old blue badge.

**Question 9** Do you agree that we should reduce the current “three relevant convictions” requirement in the legislation as described above for conviction of a:

a) Blue badge holder	<b>Yes</b>		<b>No</b>	✓
b) Third party abuse of a Badge	<b>Yes</b>		<b>No</b>	✓

What would be the advantages and disadvantages of removing the current three relevant convictions requirement from the legislation?

The “three relevant convictions” requirement should be kept due to the fact that reasons for blue badge ‘misuse’ can sometimes be complex and on occasions unintentional due to recipients’ impairments.

**Question 10** A Blue Badge has been taken away or the local authority refuses to issue any more badges to that person for a period of time to be decided by the local authority based on each individual case. For how long should the refusal to issue a blue badge be in place?

<b>Not issue a badge for a set period</b>	<b>Yes</b>		<b>No</b>	✓
<b>If Yes, not issued for: 6 months</b>	<b>Yes</b>		<b>No</b>	
<b>1 year</b>	<b>Yes</b>		<b>No</b>	
<b>2 years</b>	<b>Yes</b>		<b>No</b>	
<b>3 years</b>	<b>Yes</b>		<b>No</b>	
<b>Other period (Please specify below)</b>				

Reasons for refusal have to be clear and legal. Decisions cannot be made solely on the basis of financial constraints of local authorities or on their differing priorities.

**Question 11** Should there be any additional grounds for refusing to issue a Badge? If so, what would you suggest and why?

Yes

No

The criterion is already stringent without having additional grounds for refusing blue badges. Additional reasons to refuse blue badge applications could be used by local authorities as a way of reducing the number of blue badges they allocate, regardless of the number of applicants meeting the legitimate eligibility criteria.