

Explanatory Memorandum to The Disabled Persons (Badges for Motor Vehicles) (Wales) (Amendment) Regulations 2011

This Explanatory Memorandum has been prepared by the Department for Local Government and Communities and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Disabled Persons (Badges for Motor Vehicles) (Wales) (Amendment) Regulations 2011.

I am satisfied that the benefits outweigh any costs.

Carl Sargeant

Minister for Local Government and Communities
22 June 2011.

1. Description

These Regulations amend the Disabled Persons (Badges for Motor Vehicles) (Wales) Regulations 2000. The Regulations will extend eligibility to the Disabled Blue Badge Scheme to children under the age of 3 who are dependent on bulky medical equipment, to people with severe disabilities in both arms which create difficulties for them in operating parking meters, and severely injured armed forces personnel.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

None.

3. Legislative background

The Regulations are made under section 21 of the Chronically Sick and Disabled Persons Act 1970 ("the CSDPA"). This instrument is subject to annulment by the National Assembly for Wales (the negative procedure).

The Regulations will come into force on 1 August 2011.

4. Purpose & intended effect of the legislation

The purpose of these Regulations will be to introduce three changes to eligibility for the Disabled Blue Badge in Wales and a technical change as a result of an amendment to section 21(4) of the CSDPA. Eligibility will be extended to allow :

- i. children under the age of three who, due to a specific medical condition, need to travel with bulky medical equipment or be close to a vehicle for emergency medical treatment. These badges will expire on the day after the child's third birthday.**

Children under three years of age will be eligible for a Blue Badge if they fall within either of the following categories:

- a. a child who has a condition that requires that they must always be accompanied by bulky medical equipment which cannot be carried around with the child without great difficulty; or
 - b. a child who has a condition that requires that they must always be kept near a motor vehicle so that they can, if necessary, be treated for that condition in the vehicle or be taken quickly in the vehicle to a place where they can be treated.
- ii. people who regularly drive a non-adapted vehicle but are unable to operate or have difficulty in operating all or some types of parking meter or pay and display equipment because of severe impairments in both arms (for example, people with thalidomide-related disabilities).**

Currently applicants have to demonstrate that they have an inability to turn a steering wheel by hand even if the wheel is fitted with a steering knob to be eligible for a Blue Badge. However, this did not fit with our original policy intention as it excluded a small number of people such as those with Thalidomide related disabilities, who could drive a vehicle without adaptations to the steering wheel, but were unable to use parking meters or other pay and display equipment.

These changes will extend eligibility to disabled people who can drive a *non-adapted* vehicle, but are unable to use parking meters or other pay and display equipment. The change is not intended to extend eligibility to people who have difficulty carrying parcels, shopping or other heavy objects such as luggage.

- iii. **automatic entitlement without further assessment to severely injured armed forces personnel if they receive a guaranteed payment under tariffs 1- 8 of the Armed Forces Compensation Scheme and have been certified as having a permanent and substantial disability which causes an inability to walk or very considerable difficulty in walking.**

This approach will make it easier for the most severely injured armed forces personnel and veterans to obtain a badge on receipt of an award letter from the Service Personnel and Veterans Agency (SPVA) without the need for further assessment. This will link the Blue Badge to an award made by the SPVA under Tariffs 1-8 of the Armed Forces Compensation Scheme. In this way it is intended to be a “badge for life”, with the Blue Badge being automatically renewed on expiry.

The regulations will also introduce a modest change as a result of an amendment to section 21(4) of the CSDPA. The reference to “institution” and “institutional badge” will be replaced with “organisation” and “organisational badge”.

5. Consultation

A public consultation on these proposals began on 8th July 2010 and ended on 30th September 2010. 31 responses were received from a variety of stakeholders.

The comments received were taken into account when formulating these Regulations. Details of the consultation exercise together with the Welsh Government’s response are included in the Regulatory Impact Assessment below.

PART 2 – REGULATORY IMPACT ASSESSMENT

The *Modern Blue Badge Scheme for Wales: Action Plan for key stakeholders* was published in January 2010 (“the Action Plan”). The Action Plan identified 3 areas for early implementation. It is these areas that are covered by the proposed Regulations.

The proposals mark the first steps to delivering the priorities in the Action Plan and will contribute to delivering the Welsh Government’s commitments to provide help for our war veterans and to address the barriers faced by disabled people so that they can access important services.

Options considered for implementation :

Option 1 - Do nothing

Option 2 - Bring in Regulations covering the proposals

Option 1 – Do Nothing

- a. If eligibility to the scheme remains as it currently stands, some individuals, especially parents and carers of children under 3 will continue to be disadvantaged as they will be excluded from the scheme. They can face particular barriers to accessing services due to the medical condition or equipment associated with the child.
- b. A very small number of people with severe disabilities in both arms are still able to drive a car without adaptations to the steering wheel and currently do not qualify for a Blue Badge. These individuals do nonetheless have very real problems using public transport (because of an inability to balance or grip) and in using meters and other parking equipment.
- c. If eligibility was not extended to severely injured armed forces personnel who are in receipt of an award under tariffs 1-8 of the AFCS, they would need to apply and be assessed by the local authority to see if they are eligible for a blue badge even though they would have been assessed by the Service Personnel and Veterans Agency. This would result in additional repetitive assessments for the individual to undertake. It would also mean that they would not receive the same level of entitlement as service personnel who are in receipt of an equivalent award under the War Pensioners’ Mobility Supplement. The Welsh Government would also renege on it’s commitment in the 2008 Service Personnel Command Paper to give severely disabled veterans and service personnel in Wales automatic entitlement to a Blue Badge without further assessment.

Costs & Benefits

Disabled people who currently fall outside the eligibility criteria would remain there, and would continue to have their mobility adversely affected. They would

continue to have difficulty accessing key services and their quality of life and independence would suffer. We would also be out of step with schemes in England and Scotland who have already, or are in the process of introducing similar provision. There would be no cost to local authorities or Welsh Government in doing nothing, however local authorities expend resources in dealing with appeals and the Welsh Government deal with queries and complaints in relation to badges not being issued to children under the age of 3, which could be avoided by amendments to the Regulations.

Option 2 – Bring in Regulations covering proposals

The only way of extending eligibility to the scheme is to amend the existing Regulations. Welsh Ministers have powers under section 21 of the Chronically Sick and Disabled Persons Act 1970 to amend the regulating framework for the Blue Badge Scheme so that it can be extended to different groups of people.

Cost and Benefits

There are no new financial burdens falling on the Welsh Government from the regulations. Local authorities are likely to see a small increase in the number of applications. It is estimated that the proposed changes in eligibility are unlikely to increase uptake for the Scheme by more than approximately 800 individuals. This would represent a small increase in the 236,000 Blue badges already in circulation. It will also help to reduce the time Local Authorities spend dealing with appeals from formerly ineligible client groups.

Strong representation has been received from parents with children under 3 who on account of their particular medical condition need to travel with bulky equipment or need to be able to use the vehicle for treatment or to travel to a place for treatment. It is accepted that this small number of children (estimation is between 400-800) should be brought within the Scheme. These children will be issued with badges for a period lasting until the day after their third birthday. After this date, the child will be assessed under the general eligibility criteria for a badge. Extending the scheme in such a way will provide much needed support and assistance to parents of small children enabling them to have easier access to services and to benefit from the ability to park closer to their destination.

We have been made aware that a very small number of people with severe disabilities in both arms are still able to drive a car without adaptations to the steering wheel. These individuals do, nonetheless have very real problems in using meters and other parking equipment which need to be addressed. By making the proposed amendment to the regulations it will bring this small number of people within the scope of the scheme. Currently the eligibility criteria requires that the individual has a severe disability in both upper limbs and regularly drives a motor vehicle but cannot turn the steering wheel by hand even with the aid of a turning knob.

Disabled veterans are automatically eligible for a Blue Badge if they are in receipt of a War Pensioner's Mobility Supplement. However it is only paid to veterans injured before 6th April 2005. The Armed Forces Compensation

Scheme covers injuries sustained in service on or after 6th April 2005. There is currently no provision for automatic entitlement to a Blue Badge under this scheme. In 2008 the Service Personnel Command Paper for supporting Armed Forces Personnel (Cm 7424) introduced a cross-government strategy for supporting armed forces personnel and set out the commitment of the Welsh Government, to give severely disabled veterans and service personnel in Wales automatic entitlement to a Blue Badge without further assessment.

The Ministry of Defence has agreed that eligibility should be automatically extended to severely injured armed forces personnel and veterans who have been both awarded a benefit (giving rise to entitlement to a lump sum at tariffs 1-8) under the AFCS, and assessed and certified by the Service Personnel and Veterans Agency as having a permanent and substantial disability which causes inability to walk or very considerable difficulty in walking.

The proposed changes will not have a significant effect on local authorities who already have a statutory obligation to administer the Scheme. This is because it is estimated that the proposed changes in eligibility are unlikely to increase uptake for the Scheme by more than approximately 800 individuals. This would represent a relatively negligible increase in the 236,000 Blue badges already in circulation. It may also help to reduce the time Local Authorities spend dealing with approaches and appeals from formerly ineligible client groups.

The change in the eligibility criteria will require the Welsh Government to circulate guidance for issuing officers in local authorities. This will be issued when the Regulations are introduced.

Consultation

A consultation on these proposals began on 8th July 2010 and the consultation period ended on 30th September 2010. 31 responses were received during the consultation period. The consultation was carried out by email to local authorities, voluntary organisations and others with a direct interest who were invited to contribute. The consultation document was also made available on the Welsh Government's website.

There was strong support for the proposals to extend eligibility to children under the age of 3 who are dependant on bulky medical equipment and also for extending the scheme to people who drive a vehicle but are unable to operate or have difficulty operating parking meters or pay and display equipment due to disabilities in both arms.

The Blue Badge Action Plan made a commitment to extend automatic entitlement to severely injured armed forces personnel and veterans resident in Wales. This proposal was consulted upon as part of the Action Plan, and therefore no further consultation was undertaken on this element of the proposals.

<http://wales.gov.uk/consultations/transport/bluebadgereview1/?lang=en&status=closed>

Blue Badge Action Plan -

<http://wales.gov.uk/topics/transport/publications/100111bluebadgeactionplan/?lang=en>

A detailed analysis of the consultation responses is at Annex A.

Competition Assessment

The Regulations will not have a negative effect on competition.

Post implementation review

The extension to eligibility will be reviewed within 5 years as part of the wider action being taken to modernise the Blue Badge Scheme in Wales.

Annex A

Blue Badge Modernisation

Summary of Consultation Responses.

1. Background

- 1.1 The “Modern Blue Badge Scheme for Wales : Action Plan for Key Stakeholders’ was published in January 2010 and set out the Welsh Government’s priorities for a range of measures to modernise the scheme in Wales. Early priorities included plans to extend the Scheme to children under the age of 3 who face particular barriers due to their reliance on bulky medical equipment and to people who are unable to operate or have difficulty in operating parking meters or pay and display equipment because of severe impairments in both arms.
- 1.2 A public consultation exercise was conducted between 8th July and 30th September 2010 on the proposals.

2. Summary of responses

2.1 31 responses were received from a variety of organisations and individuals as follows :-

- Local authorities – 10
- Health service – 7
- Representative Organisations – 7
- Interest Groups – 4
- Members of the public – 2
- Other – 1

2.2 A summary of the responses received as part of the consultation exercise is provided below along with the Welsh Government’s response and plans for the way forward.

3. Extending the Blue Badge Scheme to children under the age of 3.

Q(1)(a) *Do you agree with the way in which we propose to extend eligibility to children under the age of 3 with specific medical conditions which means that they must always be accompanied by bulky medical equipment which cannot be carried around without great difficulty; and/or need to be kept near a vehicle at all times, so that they can, if necessary, be treated in the vehicle, or quickly driven to a place where they can be treated, such as a hospital?*

3.1 All respondents agreed with the proposal to extend eligibility to children under the age of 3 who face particular barriers due to the bulky medical equipment they require. Many believed that extending the scheme in

such a way would provide much needed support and assistance to parents of small children enabling them to have easier access to services and to benefit from the ability to park closer to their destination.

- 3.2 However, some respondents suggested that eligibility should be extended to all children who cannot use public transport for any reason. In addition it was suggested that eligibility should be extended to children under the age of 3 with autism; severe physical difficulties or serious impairments; who may not necessarily need a lot of medical equipment but present significant difficulties for carers transferring them into a vehicle due to abnormal muscle tone, patterns of movement and weight.
- 3.3 In extending eligibility to children under the age of 3, there was a request for clear guidance on what evidence local authorities would need to support an application and from which medical professionals. There was also a call for greater consistency in the assessment of eligibility across all local authorities as well as sufficient leeway and flexibility to allow local authorities to judge each Blue Badge application on its own merits.
- 3.4 Some respondents also noted that eligibility was based on the traditional “medical approach” rather than the social model for disability. It was felt that the Welsh Government should not specify the medical conditions as this guarantees that unfairness and discrimination is built into the eligibility criteria and assessment process.

Welsh Government’s Response

There was strong support for the proposals to extend eligibility to children under the age of 3 who are dependent on bulky medical equipment. The Welsh Government agrees that the proposals will assist parents of very young children to have easier access to services by allowing them to park closer to their destination.

The Welsh Government recognises the need for flexibility in the criteria to reflect individual needs of children although this must be balanced against the requirement for greater consistency in the decision making process across Wales. We will provide detailed guidance to local authorities to assist them in the assessment of eligibility.

We will look at the case for including children under the age of 3 with autism and severe learning difficulties as part of the wider work on extending eligibility. We are collecting evidence on the specific barriers faced by people with severe learning difficulties and autism and will need to consider the findings from this work before making any decisions on the way forward.

The Welsh Government has adopted the social model of disability. We are working with disabled people to develop our understanding of how far the social model can be used in the assessment process. We are also keen to ensure that the scheme is directed at those disabled people who face the most acute barriers to accessing services.

Q1(b) What other equipment should be added to the description of Bulky Medical Equipment?

- 3.5 Generally there was a mixed response to the list of bulky medical equipment included in the consultation exercise. Responses from some of the local health boards suggested that it was not necessary or desirable to list all possible medical equipment.
- 3.6 Some of the voluntary sector responses suggested that the list should be extended to include any equipment that would be unable to be transported in the boot of a small family car alongside the ordinary everyday equipment required for families with small children. For example, specialist pushchairs, tube feeding equipment, intermittent catheterisation, hoists / slings, standing and prone lying equipment, adapted trikes and wheelchairs.
- 3.7 A number of the responses reported that if we specify a list in Regulations then as newer equipment and technology develops the list would become obsolete. A further suggestion was that we should list the relevant barriers that exist because an individual has to carry bulky medical equipment rather than the medical equipment itself.

Welsh Government's Response

The Welsh Government realises that parents of children who rely on bulky medical equipment or suffer from highly unstable medical conditions would benefit from having access to a blue badge. The Welsh Government needs to be able to define bulky medical equipment in the Regulations. The list will not be exhaustive to allow for discretion of local authorities and to cater for advances in medical technology and equipment. Guidance will be provided to local authorities on the description of bulky medical equipment and the conditions that could be covered as highly unstable.

2. Do you agree with the way in which we propose to extend eligibility to people with severe disabilities in both arms who drive a vehicle and are unable to operate or have difficulty in operating parking meters or pay and display equipment?

The vast majority of the responses received agreed with the proposal to extend eligibility. However one of the responses did not agree as more and more local authorities are now charging Blue Badge holders for car parking, and therefore receiving a Blue Badge would not overcome the difficulties in operating parking meters or pay and display equipment.

Some local authorities do not make a distinction in the application process between driver or passenger, and additional questions would need to be asked to clarify or make this distinction. It would also cause a challenge in

enforcement as the Blue Badge should only be used when the individual is the driver and not the passenger.

It was also suggested to keep the scheme in line with the social model of disability that the Welsh Government should regulate around the design of the parking meters to ensure that they are all accessible rather than the medical conditions.

Welsh Government's Response

There was strong support for extending the scheme to people who drive a vehicle but are unable to operate or have difficulty in operating parking meters or pay and display equipment due to disabilities in both arms.

Local authorities are responsible for on street and some off street car parking. It is for them to consider the level of car parking charges and the need for any dispensation or waiver from the charge for disabled people. However, we will work closely with local authorities to review policy on car parking charges as part of the wider work on parking concessions and enforcement.

The Welsh Government does not have any powers to make regulations setting out standards for parking equipment. Technical and design standards for the industry are prepared by the BSI Group.

Other Comments

A number of the responses made general comments on eligibility for the Blue Badge scheme, including keeping the discretionary criteria as close as possible to the criteria for the Higher Rate of the Mobility Component of the Disability Living Allowance. They also suggested extending eligibility to people with 'cluster headaches' and autistic spectrum disorders. A number of responses wanted a single unified UK wide scheme with independent medical assessments and the right to an appeal. However, there was concern about the impact of workload on health professionals if any changes to assessment methods were considered.

Further changes to enforcing illegal parking were required as well as calls for more bays for disabled parking to cater for the increase in Blue Badge holders. Others asked for temporary Blue Badges to be made available whilst some considered that the current charge of £2.00 for a Blue Badge is insufficient to cover administration costs.

Welsh Government response

A number of the general issues identified in the consultation will be addressed in the further work being undertaken on the Blue Badge Scheme. Consideration is being given to how the discretionary eligibility should be assessed as well as whether the eligibility for the scheme should be extended.

Changes to the scheme parking concessions and the enforcement of illegal parking and misuse of the badge is also currently being examined.