

November 2011



Local Authority Circular (England)

Changes to the Disabled Persons (Badges for Motor Vehicles) (England) Regulations 2000



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Department for Transport
Great Minster House
33 Horseferry Road
London SW1P 4DR
Telephone 0300 330 3000
Website www.dft.gov.uk

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Foreword

This circular provides information on changes to the Disabled Persons (Badges for Motor Vehicles) (England) Regulations 2000. The changes affect:

- the eligibility criteria for some applicants and consequential action to be taken by all badge-issuing authorities;
- the grounds on which an authority may refuse to issue, or may withdraw, a badge;
- the badge design; and
- the fee that may be charged for issue of a badge.

We aim to bring the majority of these changes into force in early December 2011, subject to Parliamentary scrutiny. The changes in respect of independent mobility assessments will come into force on 1 April 2012.

1. Independent mobility assessments

- 1.1** The descriptions of disabled persons to whom a local authority may issue a badge are defined in legislation. Eligibility for a badge is generally considered as being 'eligible without further assessment' (previously known as 'automatic') or 'eligible subject to further assessment' (previously known as 'discretionary'). Currently, around 36% of badges are issued to people with automatic entitlement because, for example, they receive the Higher Rate of the Mobility Component of Disability Living Allowance or are registered blind. These applicants do not need to be assessed further by their issuing local authority.
- 1.2** Around 63% of badges are issued to people who are 'eligible subject to further assessment' by the local authority. The main assessed criterion, covering around 99% of assessed badge holders, is specified at 4(2)(f) of the Disabled Persons (Badges for Motor Vehicles) (England) Regulations 2000 (the 'Principal Regulations') and is for people with "a permanent and substantial disability that causes inability to walk or very considerable difficulty in walking". Many local authorities use assessment by the applicant's GP to help determine eligibility in such cases. However, there is a widespread perception that, in order for badge eligibility decisions to be fairer and more objective, assessments should be undertaken by professionals who are specifically trained in mobility and who are independent of the applicant.
- 1.3** In addition, responses to a Government consultation undertaken in 2010 demonstrated strong support for greater prescription from Government on eligibility assessments. 93% of local authority respondents were in favour of more prescription and 87% of representative organisations were in favour.
- 1.4** Research¹ suggests that independent mobility assessments are more accurate and can result in cost savings when compared with GP assessment. It also indicates that independent mobility assessment practices are viewed positively by badge holders who perceive it to be

¹ Improving Blue Badge Administration, Assessment and Enforcement - Good Practice Review, August 2011, <http://www.dft.gov.uk/publications/blue-badge-good-practice-review>

the most robust eligibility assessment approach overall and one that helps to reduce abuse of the scheme.

- 1.5** In order to ensure a fairer allocation of badges, we have therefore amended legislation to prescribe that the eligibility of those applying because of a "permanent and substantial disability that causes inability to walk or very considerable difficulty in walking" (regulation 4(2)(f) of the Principal Regulations) be confirmed by an independent mobility assessor.
- 1.6** The above condition does not apply when a local authority determines that, from the information that they have about the applicant, it is self-evident that the applicant meets the eligibility criterion, i.e. that the applicant is clearly eligible or ineligible and a mobility assessment would not assist the local authority in determining eligibility. The reason for this is that it would be overly burdensome for both local authorities and for applicants to require an independent mobility assessment in cases where an applicant's disability and impairment mean that they are clearly eligible or ineligible.
- 1.7** The other assessed criteria, which cover drivers with severe upper limb disabilities (at regulation 4(2)(e) of the Principal Regulations) and children under 3 with specific conditions (at regulation 4(3) of the Principal Regulations), have not been amended as we understand from local authorities that it is generally relatively easy for them to reach a decision on the small number of applicants applying under these criteria without recourse to a independent assessment.
- 1.8** It is important that, when determining eligibility because of a "permanent and substantial disability that causes inability to walk or very considerable difficulty in walking" (regulation 4(2)(f) of the Principal Regulations), local authorities use assessors who have been appropriately trained in mobility assessments, who hold appropriate professional qualifications and who are not open to bias because of a personal or commercial connection to the applicant.
- 1.9** The regulations therefore define an 'independent mobility assessor' as a person who:
- is recognised by the issuing authority as holding a professional qualification, the obtaining of which involved them being trained in the assessment of a person's ability to walk;
 - is recognised by the issuing authority as having the expertise necessary to assess the applicant's ability to walk on behalf of the local authority;
 - has never been employed or engaged as a provider of medical services to the applicant. "Medical services", in this definition,

includes all forms of medical treatment and investigations to establish whether treatment is needed, but does not include an assessment conducted to establish whether the applicant is eligible for services provided by a local authority (including the provision of a Blue Badge);

- is not, in the opinion of the local authority, precluded by reason of personal or commercial relationship with the applicant from providing an independent assessment of their ability to walk.

1.10 It is down to the issuing local authority to determine what professional qualification(s) an independent mobility assessor should hold. However, we would expect that many local authorities would use occupational therapists and physiotherapists as they have been specifically trained in the assessment of mobility. In order to practice under either of these titles a person must be registered with the Health Professions Council.

1.11 The assessor must be independent of the applicant, but it is not necessary for them to be independent of the issuing authority - they can, for example, be employed by the local authority. It is the DfT's view that the definition of an independent mobility assessor contained in the regulations precludes the use of both the applicant's GP and anyone else who has been involved in the applicant's ongoing care and treatment in determining an applicant's eligibility. It does not, however, prevent a local authority from making use of factual information from the GP or other medical professionals regarding an applicant's condition(s) and treatment(s) as evidence to support the eligibility decision making process.

1.12 It is also down to the issuing local authority to interpret this provision, to determine the circumstances in which an independent mobility assessment is not required (i.e. the circumstances in which an applicant is self-evidently eligible or ineligible) and to determine the procedures used for that assessment. However, we recommend that local authorities refer to principles on independent mobility assessments contained within non statutory guidance² issued by DfT, which will be refreshed in the New Year to take account of the changes outlined in this Circular.

1.13 Local authorities may also wish to be aware of the conclusions of the review of good practices in Blue Badge administration and assessment³ when establishing their independent mobility assessment procedures. This review contains 'core principles' for both desk-based assessments and independent mobility assessments, together with other assessment

² The Blue Badge Scheme Local Authority Guidance (England), <http://www.dft.gov.uk/publications/blue-badge-scheme-local-authority-guidance/>

³ Improving Blue Badge administration, assessment and enforcement: good practice review - final report <http://www.dft.gov.uk/publications/blue-badge-good-practice-review>

resources which authorities may wish to use as a guide or starting point to aid development of their own assessment tools. However, DfT neither mandates nor endorses the use of any particular tools and it remains the responsibility of each local authority to determine their own assessment procedures and to ensure that those procedures are in line with the legislation that governs the Blue Badge scheme.

- 1.14** The research indicates that, if local authorities use a well designed application form and a screening assessment that has been designed with input from independent mobility assessors with experience of conducting Blue Badge mobility assessments, they are able to ‘filter out’ those new applicants who are clearly eligible or clearly ineligible without the need for an independent mobility assessor to see them in person. The work also indicates that a robust independent mobility assessment at the point of initial application can highlight those successful applicants with conditions and mobility impairments that are unlikely to change and who would not require a further in-person independent mobility assessment at the point of badge renewal.

2. Amended grounds for refusing to issue, or for withdrawing, a badge

Grounds for withdrawing a badge

- 2.1** Regulation 9(1) lists a series of events, on the occurrence of any of which, a badge should be returned to the issuing authority. We have included in regulation 9(1)(e) circumstances in which a badge has suffered any damage that prevents it from being identified correctly or distinguished from a forgery. This is because it needs to be clear to an enforcement officer that the badge is both real and valid. This would cover, for example, scenarios involving accidental damage or where a badge may have been tampered with in some way. It widens the power of the regulation, so that a badge should be returned not just when it is illegible, but when it has been damaged in such a way (e.g. security features tampered with) that its authenticity or validity is in doubt.
- 2.2** However, it should be made clear, that where a local authority seeks to have a badge returned under this regulation, it should not mean that the badge will necessarily be permanently withdrawn from the holder. If grounds exist under Regulation 9(2) for withdrawing the badge from the holder because it has been misused or was obtained by false representation, then it may be retained, in accordance with the regulation. Otherwise, we would expect a replacement to be issued in accordance with regulation 7(1), which now allows for a replacement badge to be issued in circumstances where the original has become so damaged that it can no longer be identified correctly or distinguished from a forgery.
- 2.3** Regulation 9(1)(f) now allows a local authority to require return of a badge from a resident in circumstances where another authority issues the same person a badge and both badges are 'current' at the same time. The Blue Badge scheme has always operated on a one badge per person basis and we do not want people to be in possession of more than one badge as this would undermine the scheme and increase the

opportunities for abuse. In practice, the inadvertent issue of a second badge should not happen if appropriate checks are made at the point of application. Furthermore, when the Blue Badge Improvement Service (BBIS) is rolled out in 2012, the system should spot when an individual is already in possession of a badge. We have never intended that someone should have more than one valid badge at any time. However, until BBIS is in place, it is possible that if someone has dual residency or moves home and applies to the new authority or makes a false representation, they could obtain more than one badge. In such a scenario, the regulatory change described here would enable recovery of the first issued badge by the respective local authority.

2.4 The most significant change to the regulations, from an enforcement perspective, is in respect of the ability to withdraw a badge for misuse under regulation 9(2). Previously, other than where a badge had been obtained by false representation, a badge could only be withdrawn for misuse if three "relevant" convictions had been obtained. This was very burdensome and deterred many local authorities from withdrawing badges where it was warranted. Furthermore, the definition of a "relevant conviction" was outdated. It rightly included convictions for wrongful use of a Blue Badge under section 117 of the Road Traffic Regulation Act 1984 (RTRA) *but also* convictions for parking contraventions. However, under civil parking enforcement, local authorities tend to deal with parking contraventions by PCNs rather than prosecutions. The Government prefers this approach and would not favour badges being withdrawn for parking contraventions by badge holders.

2.5 Under the amended regulation 9(2)(a), a badge can be withdrawn for one successful prosecution of a badge holder or third party, of:

- an offence under section 21(4B) of the Chronically Sick and Disabled Persons Act 1970 (this covers misuse of a real badge or use of a fake/altered badge while the vehicle is being driven); or
- an offence under sections 115 or 117 of the Road Traffic Regulation Act 1984 (this covers misuse of a real badge or use of a fake/altered badge when the vehicle is parked); or
- dishonesty or deception committed under any other UK legislation in relation to the badge (which takes account of offences under, for example, the Fraud Act 2006, the Theft Act 1968, the Forgery and Counterfeiting Act 1981, etc).

2.6 These "relevant convictions" are defined in new regulations 2(3) and 2(4) which replace the previous definition of a "relevant conviction".

2.7 Where the offence prosecuted was committed by a third party using the holder's badge, the authority needs to demonstrate that the holder knew the third party was using the badge, before it can be withdrawn.

- 2.8** Inclusion of offences under S21(4B) of the Chronically Sick and Disabled Persons Act 1970 and S117 of the Road Traffic Regulation Act 1984 as relevant convictions, is intended to address misuse of a real badge by a third party or use of a fake/altered badge by anybody. Although these offences also cover wrongful display of a badge by the holder, it is NOT intended that a badge holder should be prosecuted and have their badge withdrawn for merely displaying it wrongly.
- 2.9** To address any instance where a badge holder might attempt to sell (or gift) their badge, it will be possible to withdraw a badge, under the amended regulation 9(2)(b), where the holder has purported to transfer the badge to another person.

Grounds for refusing to issue a badge

- 2.10** To reflect the changes to regulation 9(2)(a) described above, a consequential amendment to regulation 8(2)(a) has been made. Previously a local authority could refuse to issue a badge on various grounds, including previous misuse that led to three relevant convictions. Now, a local authority can refuse to issue a badge for, amongst other reasons, previous misuse having led to one conviction of an offence defined in regulations 2(3) and 2(4).
- 2.11** The Chronically Sick and Disabled Persons Act 1970 already states that "a badge may be issued to a disabled person.....resident in the area of the issuing authority". We have reinforced this in the regulations by including in regulation 8(2)(b)(i) a provision which allows the local authority to refuse to issue a badge if the applicant fails to provide adequate evidence of residency.
- 2.12** We have also made it clear in regulation 8(2)(f) that an authority may refuse to issue a badge if the applicant already holds a valid badge issued by another issuing authority.
- 2.13** Given the amendments summarised above regarding eligibility under regulation 4(2)(f), we have also added a consequential amendment at regulation 8(2)(e) to provide local authorities with the grounds to refuse to issue a badge if a report from an independent mobility assessor confirming an applicant's eligibility has not been made available to that local authority in a form that is satisfactory to them.

3. Badge design and the fee

- 3.1** The design of the blue badge is specified in regulations to enable badge holders to use a badge anywhere in England, and indeed other parts of the UK. Regulation 11, and parts 1A, 2A and 3A of the Schedule are being amended to implement a new Blue Badge design. The existing badge design is very easy to copy and to forge, and details such as the expiry date can be altered.
- 3.2** A new design is being implemented for both individual and organisational badges, which use sophisticated secure print technologies to ensure badges cannot be copied or forged, and details cannot be altered. The new badge design also includes raised text features, a hologram and has to be tested to withstand up to 120 degrees centigrade.
- 3.3** Misuse of badges by someone other than the badge holder is currently a common occurrence. The written information contained on the badge has been changed to clarify the correct use of a badge. Part 3A will mean that an up-to-date photograph of the badge holder must be submitted and digitally scanned on the back of an individual badge, unless the issuing local authority is satisfied that the holder is not expected to live beyond six months from the date of issue, to ensure the badge holder can be identified if necessary. The standards for photographs outlined in Part 3A are the same as those used for passports and driving licences.
- 3.4** The regulation means that local authorities are only able to issue a badge that complies with the regulations from 1st January 2012. The old-style badges issued up until the end of December 2011 will still be able to be used by badge holders until the date they expire, which could be December 2014. The new badge design should be issued to all new badge applicants, those renewing and those replacing badges that may have been lost or stolen.
- 3.5** Regulation 6 raises the maximum fee that a local authority can charge for the issue of a badge from £2 to £10. The fee has been set at a maximum of £2 since 1983 and does not adequately cover the costs involved in issuing a badge. The fee is being raised, after consultation, to cover the costs of the new badge design and to cover administration costs more adequately.

- 3.6** Local authorities will be able to charge the higher fee of £10 for all badges issued with a start date of 1st January 2012. The new badge design will include a start date.