This briefing summarises the key points of debate at Stage 1 and the main conclusions made by the Local Government and Regeneration Committee in its Stage 1 report. It also summarises the key amendments put forward at Stage 2.

SPICe briefing 14 - 24 describes the Bill as introduced in more detail.
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EXECUTIVE SUMMARY

The blue badge scheme is for drivers or passengers with severe mobility problems. The scheme provides a range of on-street parking concessions enabling blue badge holders to park closer to where they need to go. Depending on the local authority, parking enforcement, including blue badge enforcement, is either the responsibility of the local authority or the police.

The Disabled Persons’ Parking Badges (Scotland) Bill (“the Bill”) is a Member’s Bill supported by the Scottish Government. It aims to tackle the misuse of the blue badge scheme, thereby improving the quality of life for disabled people by freeing up parking spaces for legitimate blue badge users. Badge misuse may take a range of forms. For example, allowing a friend or family member to use the badge when the disabled person it belongs to is not in the car, tampering with a badge or using a badge that is out of date.

The proposals provide additional powers to local authorities and the police to enforce the blue badge scheme in Scotland. It will strengthen current enforcement powers, including the ability to cancel or confiscate a badge in certain circumstances and will provide for security features of the blue badge to be approved administratively by Scottish Ministers rather than by regulation. The Bill will also allow regulations to be made to ensure that people refused a blue badge on eligibility grounds are entitled to seek a review of the decision from the local authority.

Key points of discussion during Stage 1 scrutiny related to the creation of a criminal offence for using a cancelled badge and whether the proposed review process would adequately meet the needs of scheme users. Stakeholders questioned badge holders’ ability to identify the proposed non-uniformed enforcement officers and outlined the need for clear and sensitive guidance in relation to badge confiscation. They also highlighted the need for improved education surrounding what constitutes badge misuse. In written evidence, COSLA outlined concerns at the withdrawal of the Police Scotland Traffic Warden Service and the impact this would have on local authorities in terms of enforcement.

At Stage 2, seven amendments were lodged focusing on the power to confiscate badges, identifying non-uniformed enforcement officers, the offence of using a non-valid badge and the power for Scottish Ministers to issue guidance. All amendments were withdrawn following debate.
INTRODUCTION

The Disabled Persons' Parking Badges (Scotland) Bill (the Bill) is a Member's Bill, prepared with the assistance of the Scottish Government and was introduced to the Parliament on 17 December 2013 by Dennis Robertson MSP. The Parliament designated the Local Government and Regeneration Committee as lead committee.

The Bill contains six provisions as follows:

**Section 1 - Form of badge** provides that the form of a blue badge must fulfil any requirements specified in regulations or set administratively by the Scottish Ministers.

**Section 2 – Power to cancel badge** provides a power for local authorities to cancel badges which are no longer held by the person to whom they were issued.

**Section 3 – Power to confiscate badge** extends the provision which currently allows a constable or other enforcement officer to examine a blue badge to allow confiscation where it is apparent that the badge should have been returned to the local authority or has been cancelled, misused or forged.

**Section 4 - Offence of using cancelled badge** it is made an offence to use a badge that should have been returned to the local authority as provided for in the regulations or to use a badge that has been cancelled.

**Section 5 – Enforcement officers** provides a power for local authorities to designate certain persons (other than parking attendants in uniform) to examine and retain badges in pursuance of matters relating to fraud or misuse of a blue badge.

**Section 6 – Review of local authority decision** allows the making of regulations to require local authorities to have review processes in place for applicants who have been refused a blue badge on grounds of eligibility.

PARLIAMENTARY CONSIDERATION

Table 1 lists the key dates of the Bill's progress through the Parliament.

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<td>The Delegated Powers and Law Reform Committee's report to the Local Government and Regeneration Committee</td>
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<td>Stage 1 report: Local Government and Regeneration Committee</td>
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STAGE 1 – KEY ISSUES

At Stage 1, the lead Committee is tasked with reporting on the Bill's general principles. During Stage 1, the Committee took oral and written evidence from a range of stakeholders, for example, Inclusion Scotland, The Law Society, Police Scotland, The Mobility and Access Committee for Scotland, Disability Motoring Scotland and local authority representatives. Below is a brief summary of the key issues raised in written and oral evidence as well as the conclusions of the Local Government and Regeneration Committee Stage 1 report.

Overall, evidence submissions suggested that stakeholders welcomed the measures contained in the Bill that were seen to strengthen the existing scheme. However, stakeholders were clear that genuine users should not be penalised by the proposals. Blue badge holders are generally of the opinion that badge misuse is widespread, as the scheme is so highly valued this can be a cause of anger and frustration.

Key issues of debate regarding the Bill’s proposals relate to the creation of a criminal offence for using a cancelled badge and whether the scope of the proposed review process was suitable. Badge Holders ability to identify non-uniformed officers; the need for clear and sensitive guidance in relation to badge confiscation and the need for an awareness raising programme of what constitutes badge misuse were also raised.

In their written evidence COSLA highlighted concerns at the withdrawal of the Police Scotland Traffic Warden Service and the impact this would have on local authorities in terms of enforcement.

Offence of using a cancelled badge

The Law Society found the creation of a limited liability offence to be a disproportionate response and suggested that the most appropriate sanction would be a civil penalty in order to strike a fair balance. It was noted that those who use a blue badge fraudulently would already be liable under the common law offence of fraud. However, Police Scotland were supportive of the proposals as perpetrators would probably view prosecution in the civil court less seriously than they view prosecution in the criminal court.

While the Committee accepted the Law Society's point that there is an existing offence available, it agreed with the views of the police and considered the offence provisions in section 4 of the Bill to be necessary, proportionate and appropriate. It also noted that similar criminal provisions exist in England and Wales.

Review process

The Law Society and the EHRC voiced concerns that the Bill restricts the review process internally to the local authority and there is no right of independent appeal. Although the policy memorandum states that the presence of judicial review would make the legislation compliant with Article 6 of the European Convention of Human rights, the Law Society had concerns about the high cost of taking a case to judicial review which would be an unrealistic expense for the average blue badge user. It also noted that the use of judicial review would be out of proportion and is not a genuine substitute for appeals as it cannot consider the merits of a decision or
substitute it with an alternative. It was suggested that a more appropriate solution would be for an external review process to be established through the Sheriff.

The Committee was assured that Regulations would require local authority reviews to be undertaken by different officials. The Committee also noted that there could be a role for the Scottish Public Services Ombudsman in considering the administrative approach taken by local authorities in such cases. Overall, it was satisfied the proposed review provisions in the Bill were reasonable and proportionate.

**Use of non-uniformed officers**

Stakeholders, such as Inclusion Scotland, raised serious concerns regarding how a blue badge holder would identify non-uniformed enforcement officers. The lack of a uniform was also seen to potentially make it easier for unscrupulous people to pose as officers and abuse the scheme.

The Committee stated in its Stage 1 report that it was content with the provisions in the Bill relating to confiscation of badges and the use of non-uniformed officers. It was assured that provision will be made for all officers involved in enforcement activity to receive full training and a multi-agency working group was developing appropriate guidance. It noted that there are non-uniformed council officers working in a range of areas across Scotland and that such officers operate effectively without causing the sort of difficulties envisaged.

**Education on badge misuse**

Overall, the proposal to cancel or confiscate badges was welcomed but with the clear proviso that training and guidance encourages sensitive handling for badge holders that make genuine mistakes and that badges which are confiscated are returned to genuine users promptly.

In its report, the Committee encouraged the Scottish Government to work with its multi-agency group to bring forward new and focussed ways to educate badge holders with the aim of improving compliance and reducing inadvertent misuse. It also encouraged the group to look closely at ensuring road signage is both visible and clear. The Committee envisaged that as the level of unintentional misuse falls it will become easier for the authorities to take the necessary robust action against those whose misuse is wilful.

**Police Scotland Traffic Warden Service**

On-street parking enforcement is the responsibility of the police and local authorities. The police are responsible where parking remains criminalised and use police officers or police traffic wardens to enforce parking restrictions. Local authorities are responsible in areas where parking has been decriminalised and use uniformed parking attendants or contractors to impose Penalty Charge Notifications. As at June 2014 12 local authorities operate Decriminalised Parking Enforcement (DPE).

Police Scotland withdrew its dedicated traffic warden service across Scotland on 3 February 2014 and this was a key concern raised by COSLA in its written submission. It stated that it would result in a gap in enforcement of up to two years in councils who have not yet adopted but are seeking to move to Decriminalised Parking Enforcement (DPE), while councils which deem it uneconomic or not cost-effective to move to DPE would face “total uncertainty”.

Police Scotland assured the Committee that it continued to be fully committed to enforcing the blue badge scheme and working with local authorities to tackle misuse. The Committee accepted this position and was of the view that COSLA had misconstrued the provisions of the Bill in relation to the wider issue of Decriminalised Parking Enforcement, which is not a matter covered in the proposed legislation.
STAGE 2 KEY AMENDMENTS

Stage 2 offers an opportunity for any member of the Parliament to propose amendments to a Bill, although only members of the lead Committee taking forward the bill can vote on any amendments. The Stage 2 Committee meeting was attended by Dennis Robertson, the member in charge of the bill; Stewart Stevenson, who had been designated as member in charge of the bill for the purposes of stage 2; and Keith Brown, Minister for Transport and Veterans.

The Marshalled Lists of Amendments for Stage 2 and Groupings of Amendments for Stage 2, the Official Reports of the Local Government and Regeneration Committee and the Bill as amended are available on the Parliament website.

A total of 7 amendments were lodged by John Wilson MSP at the suggestion of Inclusion Scotland. All amendments were withdrawn following debate.

AMENDMENTS WITHDRAWN

Table 2: Amendments withdrawn.

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<th>Amendment</th>
<th>Discussion</th>
<th>Outcome</th>
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<tr>
<td>Limitation on power to confiscate badge</td>
<td>The purpose of the amendment was to limit the powers of confiscation to non-valid badges. For example, those that should have been returned to the local authority; have been tampered with; or are obviously fake. Neither the Member in charge of the Bill nor the Scottish Government agreed with the amendment. They viewed the power to confiscate badges from third parties who weren’t entitled to use the badge as important as it discouraged abuse and freed up parking spaces for genuine badge users. Reassurance was given that badges would only be confiscated for justifiable reasons and that valid badges would be returned to their holders no later than 14 days after confiscation with an explanatory letter reminding the holder of their rights and responsibilities.</td>
<td>Withdrawn</td>
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<tr>
<td>1 – John Wilson</td>
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<td>Offence of using a badge that is not valid</td>
<td>These amendments were proposed out of concern that a disabled person or their carer could be criminalised for inadvertently using a badge that is no longer valid. Stewart Stevenson pointed out that each case would be weighed on its own merits and that not all cases would be referred to the procurator fiscal if it was not in the public interest. It was also highlighted that a person could only be found guilty of an offence if the prosecutor could prove a level of knowledge or intent.</td>
<td>Withdrawn</td>
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<td>2, 3 &amp; 4– John Wilson</td>
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<td>Persons entitled to act as enforcement officers</td>
<td>These amendments sought to protect vulnerable badge holders from potential fraud and abuse from those posing as non-uniformed enforcement officers. It was suggested that non uniformed officers would be useful for detection and surveillance but that officers that approach the public should be immediately identifiable in uniform. Stewart Stevenson and the Minister for Transport &amp; Veterans</td>
<td>Withdrawn</td>
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<tr>
<td>5 &amp; 6– John Wilson</td>
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informed the committee that all non-uniformed officers would carry identification cards. Also that the provision provided a choice, not a duty, for local authorities to provide non uniformed officers. They also outlined the proactive approach non uniformed officers would be able to take to tackle long term systematic badge abuse. John Wilson withdrew the amendment but requested that there be a standard format for the ID cards so that those travelling across local authority boundaries would still be able to identify officers.

Scottish Ministers: power to issue guidance

| 7 – John Wilson | The purpose of this amendment was to put guidance on a statutory footing and ensure that local authorities were required to have regard to this guidance. The Minister and the designated Member stated that the key areas of compliance would be outlined in regulations and that guidance should have a degree of flexibility and meet local need. | Withdrawn |
SOURCES


RELATED BRIEFINGS

SB 14-24 Disabled Persons' Parking Badges (Scotland) Bill (493KB pdf)

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Published by the Scottish Parliament Information Centre (SPICe), The Scottish Parliament, Edinburgh, EH 99 1SP

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