



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# LOCAL GOVERNMENT AND REGENERATION COMMITTEE

Wednesday 16 March 2016



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**LOCAL GOVERNMENT AND REGENERATION COMMITTEE**  
**10<sup>th</sup> Meeting 2016, Session 4**

**CONVENER**

\*Kevin Stewart (Aberdeen Central) (SNP)

**DEPUTY CONVENER**

\*John Wilson (Central Scotland) (Ind)

**COMMITTEE MEMBERS**

\*George Adam (Paisley) (SNP)

\*Jayne Baxter (Mid Scotland and Fife) (Lab)

\*Cameron Buchanan (Lothian) (Con)

\*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)

\*Cara Hilton (Dunfermline) (Lab)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Derek Mackay (Minister for Transport and Islands)

Dr Richard Simpson (Mid Scotland and Fife) (Lab)

**CLERK TO THE COMMITTEE**

David Cullum

**LOCATION**

The Robert Burns Room (CR1)



## Scottish Parliament

### Local Government and Regeneration Committee

*Wednesday 16 March 2016*

*[The Convener opened the meeting at 13:22]*

### Decision on Taking Business in Private

**The Convener (Kevin Stewart):** Good afternoon and welcome to the 10th meeting in 2016 of the Local Government and Regeneration Committee. Everyone present is asked to switch off mobile phones and other electronic equipment, as they affect the broadcasting system. Some committee members may consult tablets during the meeting. That is because we provide meeting papers in digital format.

Agenda item 1 is a decision on whether to consider in private agenda item 4, which is consideration of our draft report on today's business. Are members agreed?

**Members** *indicated agreement.*

## Subordinate Legislation

### Disabled Persons (Badges for Motor Vehicles) (Scotland) Amendment Regulations 2016 (SSI 2016/72)

13:23

**The Convener:** The substantive agenda item is item 2, under which we will take evidence on motion S4M-15895, in the name of Dr Richard Simpson.

I welcome Derek Mackay, Minister for Transport and Islands; Graham Thomson, from Transport Scotland; and Anne Cairns, from the Scottish Government. Before we take evidence from the minister, I welcome Dr Simpson, who joins the committee for agenda items 2 and 3. I invite him to make a statement to the committee.

**Dr Richard Simpson (Mid Scotland and Fife) (Lab):** Thank you, convener. I am sorry to drag the committee here on such a busy day. This is a new experience for me—I have not moved an motion to annul a Scottish statutory instrument previously. I am grateful to the committee for the opportunity to address members on the SSI.

I would not normally scrutinise an SSI tabled with another committee but the issue—the scope of the blue badge scheme as it pertains to those with a mental illness or learning disability—is one on which I have had some correspondence and in which I have an interest arising from my previous occupations in general practice and psychiatry.

While the attempt in the SSI to address a difficult area—the inclusion in the scheme of some of those with a mental disorder who have little or no awareness of the danger from traffic—is commendable, the pilot, as proposed in the SSI, has failed to include two categories of individuals who, I believe, should have been considered.

As proposed, the two requirements for a blue badge are for the individual: to have a mental disorder under section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003; and either to be in receipt of the highest or middle rate of the care component of disability living allowance or the higher or lower rate of attendance allowance or to have been assessed for the personal independence payment—based on having limited or severely limited ability to carry out daily living activities, taking into account such factors as their verbal communication, reading, understanding of signs, symbols and words and engagement with other people face to face.

Those in care homes who meet the first criterion, and who are in receipt of either free personal care or full funding from a local authority,

will not receive any of the benefits to meet the second criterion, whereas those who are not eligible for free personal care by reason of age may meet the second criterion, as they may be in receipt of an attendance allowance.

Many care home residents and long-term, mainly learning disabled, patients in national health service facilities value being taken out into the community safely by their family, friends or, in some cases, befrienders. A blue badge could be important for them, but they would not be eligible because of the way in which the SSI is currently written.

I acknowledge that we cannot simply allow anyone with a diagnosis of, for example, dementia, depression or learning disability who happens to be in a care home to be eligible. However, if the criteria exclude a group of people who might be eligible if they were in the community by virtue of being able to obtain one of the additional benefits required, those individuals will not be able to go out, except if care organisation staff use an organisational blue badge. Members should note that such a badge cannot be passed on or lent to a private person, such as a friend or relative, so that is not an alternative option.

As I have indicated, those concerns arise not only for care home residents, although that is probably the most important group: there are some 40,000 individuals in care homes, 4,500 of them with learning disabilities. The same concerns arise for those in long-term NHS hospital continuing care, and I am not certain that the NHS even possesses an organisational blue badge to be able to take those individuals out.

I seek assurances from the minister that those flaws will be remedied early in the new session of Parliament through further amendment of the regulations, and that he will not wait until the end of the pilot a year from April 2016. I appreciate that a pilot has the potential for evaluation, but unless those groups are fully considered now, they will not be included when the pilot is completed next year.

In addition, I ask the minister whether the scheme will cover children with learning disability who are of an age when they would normally be expected to be aware of the dangers of traffic but who, by virtue of their learning disability, do not have that awareness. Such awareness is not just age related; it is affected by the extent and nature of the learning disability. I am thinking particularly of children with autism spectrum disorder, who are often unable to be aware of such dangers.

I hope that the minister will be able to give us sufficient reassurance, and I thank him for his letter—I understand that committee members are

getting a hard copy of it just now, but may not yet have had time to consider it. I will address it later—can I check that I will have an opportunity to respond to the minister, convener?

**The Convener:** You do not have the opportunity to respond to the minister until we get to the moving of your motion; you will be able to say what you want at that point.

**Dr Simpson:** That is excellent; I will conclude at that point.

**The Convener:** As there are no questions from members for Dr Simpson, would you make a statement, minister, please?

**The Minister for Transport and Islands (Derek Mackay):** Thank you. I welcome the opportunity to speak today. I have one point of immediate clarification on Dr Simpson's question about children with learning disability: yes—for the avoidance of doubt, I confirm that they would be covered in the circumstances outlined.

Now I turn to the other areas that Dr Simpson raised. The decision to lay these amendment regulations before Parliament was based on a recommendation from a working group set up by Transport Scotland. The working group, made up of representatives of disabled people's organisations, local authorities and healthcare professionals, recommended to me that eligibility be extended to people with a diagnosed mental disorder, initially on a pilot basis to allow the impact of the change to be monitored and to ascertain how a change could be effected on a permanent basis. Convener, I will say at the outset that I do not like some of the terminology that is used, but we have to use it as it is already understood—"mental disorder" is one example of terminology that we may not be too keen on but which we have to use.

13:30

I am grateful to Dr Simpson for highlighting two areas of concern. First, he has identified that those who receive free personal care and reside in a residential care home lose their entitlement to attendance allowance after 28 days and so would be ineligible for a blue badge. It is not possible to determine exactly how many people that would be because not all people in that situation would meet the eligibility descriptor or want to apply for a badge. However, Dr Simpson's concerns were discussed by the working group, including Alzheimer Scotland, last week, and it felt that people in that situation—such as those with severe dementia—would often be eligible for a badge on mobility grounds and that some of them would be unable to leave the care home at all. Therefore, the working group felt that at this stage

it would be appropriate to proceed with the pilot as planned.

I do not believe that Dr Simpson's second concern, relating to people in receipt of either NHS continuing healthcare or hospital-based complex clinical care, is a significant issue. People in that situation are no different from anyone else who, by being in hospital for a considerable length of time, has their benefits stopped. It should be noted that blue badges cannot be awarded for a period of less than 12 months and indeed that, during the pilot, badges will be awarded for a fixed term of one year.

One of the reasons why the working group recommended a pilot was because it is not possible to determine exactly how many people will apply for badges. By running an evaluation alongside the pilot, we are looking to test how eligibility is determined, the impact on applicants and potential applicants, and the blue badge scheme as a whole. That will help the working group and me determine how to effect a change on a permanent basis.

Finally, a number of people have been very interested in moving on with this pilot study so that we can take the matter forward. I encourage the committee to make progress so that we can extend eligibility and make the progress that we all want.

**The Convener:** Thank you. As no member has a question for the minister, we will move on to agenda item 3, which is formal consideration of motion S4M-15895.

I will set out the procedure. Richard Simpson will first speak to and move his motion. There will then be an opportunity for members to debate the motion, for which we have up to 90 minutes. Following the debate, the minister will be invited to wind up. Finally, Richard Simpson will be given an opportunity to respond to any points and indicate whether he wishes to press or withdraw his motion.

**Dr Simpson:** Thank you. It is important to recognise that we are dealing with individuals; in Parliament, we tend to get lost in dealing with categories. The minister says that there are not significant numbers involved, but if there is one patient in a care home who might be ineligible because they are mobile enough, although they do not have the capacity to recognise the dangers of traffic, that is one person too many.

I appreciate that this is a pilot and I welcome the SSI—I think that it contains important changes—but I know of patients who would otherwise be eligible but will not be as the SSI is currently formulated. I hope that the minister will agree to, and that the working party will quickly examine, a careful evaluation of those who might be eligible

were the criteria to be extended to allow people to qualify other than on the grounds of mobility. In other words, if they receive free personal care—and they also have a mental disorder of a degree and severity that makes it difficult for them to recognise the dangers of traffic—I think that they require sufficient support to be eligible. I had a relative in that position, so I am speaking from not just a professional or political point of view, but a personal point of view.

The minister said that the numbers in the group who receive NHS continuing care would not be significant and that the reason for leaving them out is because they might not be eligible for 12 months. I refer him to the Mental Welfare Commission for Scotland report on people with learning disability, in which the delay in discharging those patients into the community is said to have been extremely significant. Over 35 per cent of patients with learning disability were not discharged in an adequate time. Indeed, if you examine code 9 discharges—that is, of those waiting for complex care packages in the community—you see that the delays can often be over 12 months. For those individuals then to be, effectively, incarcerated in hospital and unable to be taken out is simply not acceptable.

I urge the minister, in his final response, to provide the committee with a guarantee that both of those groups will be evaluated fully within, or alongside, the pilot scheme. Unless I receive that assurance, I will press the motion to annul. I really have no wish to do so because, as the minister indicated, that would delay a pilot scheme that is extremely worthwhile and valuable. Nevertheless, I feel that the exclusion of those individuals is wholly inappropriate.

I move,

That the Local Government and Regeneration Committee recommends that the Disabled Persons (Badges for Motor Vehicles) (Scotland) Amendment Regulations 2016 (SSI 2016/72) be annulled.

**The Convener:** As there are no contributions from members, I call the minister.

**Derek Mackay:** I just want to outline to the committee that it has options here.

A request has been made of me that I can certainly agree to, which is that the on-going pilot scheme will be kept under review. I have taken my advice from the working group, and I have outlined the membership of that working group. The decision is not mine, or Transport Scotland's, taken in isolation. The working group informed the nature of the pilot, which comes in order that we can make progress—progress that was demanded of me by other members of Parliament, including Labour members. Therefore, it would be rather

strange not to proceed with it now and for many people to be denied access to the scheme.

Of course, therefore, I would not support annulment—because that would stop the pilot happening and mean that we would not extend the scheme at all. I will, as far as I can, keep it under review. If I am not the minister in future, I am sure that any successor minister would do the same.

I encourage the committee to proceed so that we can evaluate the position and see what we can do to assist, in the spirit that was requested of the Government last time we debated the subject. That is the offer that I make to Dr Simpson—to keep it under review. I have been led and informed by the working group, which has on it representatives of Alzheimer Scotland. I think that there has been a very fair, proportionate and reasonable approach.

**The Convener:** Thank you for that, minister. I ask Dr Simpson to respond and to press or withdraw the motion, please.

**Dr Simpson:** First, I welcome the fact that the minister has brought forward this SSI. At every stage, I have said that I support it. I do not wish to interrupt the pilot—I think that starting it is important. The minister says that he will keep the evaluation under review, and I hope that he will find a means of examining how these groups could be included in the evaluation in some form, rather than waiting until the end of the pilot year.

I do not believe that the numbers involved would be very large—which is important because local authorities would not want to deal with large numbers—but I do believe that if members of these groups are excluded, it will be damaging to their health and that they should, therefore, be included. However, given the minister's assurances that he will keep the issue under evaluation and my hope that the working group itself will undertake a review in greater detail—perhaps researching how many individuals in care homes or patients in long-stay residences might be affected—and that the minister might consider consulting groups such as the Mental Welfare Commission for Scotland, which might be helpful, I will not press my motion to annul.

*Motion, by agreement, withdrawn.*

**The Convener:** Dr Simpson, this committee has kept a very close eye on this SSI. I believe that the original date of its discussion was given to you and I have to say that I am quite disappointed that we are having to deal with this at the very end of a session.

With that, we conclude our consideration of agenda item 3. I thank committee members for their forbearance today.

13:39

*Meeting continued in private until 13:40.*



This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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