

## DEPARTMENT FOR TRANSPORT

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*DfT Circular 03/2013*

**Department for Transport**

**Great Minster House, 33 Horseferry Road, London SW1P 4DR**

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8 October 2013

# THE BLUE BADGE SCHEME: ENFORCEMENT CHANGES

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## **INTRODUCTION**

1. This circular provides information on changes to section 21 of the Chronically Sick and Disabled Persons Act 1970; section 117 of the Road Traffic Regulation Act 1984; and the Disabled Persons (Badges for Motor Vehicles) (England) Regulations 2000, as a consequence of the commencement of the Disabled Persons' Parking Badges Act 2013 and the introduction of the Disabled Persons (Badges for Motor Vehicles) (England) (Amendment) Regulations 2013.
2. The Circular only focuses on the changes brought about by the new legislation which are likely to affect local authorities in their day-to-day administration and enforcement of the Blue Badge scheme.
3. The changes affect:
  - the inspection and seizure of badges by local authorities;
  - the cancellation of badges by local authorities in certain circumstances;
  - the offence of using a badge that is no longer valid; and
  - the law relating to one badge per person
4. These changes come into force on 8 October 2013.

## **INSPECTION AND RETENTION OF BADGES**

5. Until now, constables or enforcement officers could inspect badges under powers in the Chronically Sick and Disabled Persons Act 1970 ("the 1970 Act") but only the police could seize badges. With the widespread adoption of civil parking enforcement by local authorities, however, this situation is outdated. It is often impractical for local authorities to engage a police presence to assist in Blue Badge enforcement. Consequently, whilst many authorities will issue parking tickets to vehicles for parking infringements involving the misuse of a Blue Badge, they will often stop short of inspecting the badge and taking it away from the user in cases where the badge is not valid, or where a valid badge is being used by someone other than the holder.
6. However, commencement of the Disabled Persons' Parking Badges Act 2013 ("the 2013 Act") will enable enforcement officers to inspect and retain a badge without police presence if they have reasonable grounds for believing that the badge:
  - (a) is a fake
  - (b) has already been cancelled e.g. because it was reported lost or stolen (see section 2 below), or
  - (c) should have been returned to the issuing authority (e.g. because it has expired, the holder has died, the holder is no longer disabled, a

replacement has been issued, the badge has become damaged/faded, the authority has written to the holder requesting return of the badge either following a relevant conviction for misuse or because it was obtained by false representation), or

(d) was being misused (including by someone other than the holder when the genuine holder is not involved in the journey).

7. There is no obligation on local authorities to use this power but many have indicated that they will do so. In using the power, we would expect enforcement officers to take appropriate steps to establish “reasonable grounds” for retaining the badge. Local authorities will wish to establish suitable procedures for their enforcement officers to follow but they could include checking the BBIS database; telephoning their local authority to establish further details of the badge/badge holder; or interviewing the person using the badge at the roadside.
8. Of particular interest is the power to retain a badge that is being used (misused) by someone other than the genuine badge holder. In using this power we would expect enforcement officers to establish that the disabled badge holder is not part of the journey. Even if they are not present, the badge holder may have been dropped at that place or may be being picked up from that place. Very often the person using the badge will admit on questioning that the holder is not involved in the journey; some local authorities telephone the holder to establish their whereabouts.
9. When a badge is retained in scenarios (a)-(c) above we expect the local authority will destroy it in due course, as it would no longer be valid (if the authority recovering the badge is not also the badge-issuing authority, we would suggest they liaise with the issuing authority in this respect). However, when a valid badge is retained under (d) above it should normally be returned to the holder. That is because the power to retain a badge is not the same thing as a power to permanently withdraw/confiscate a badge. Indeed, the badge holder may not know the third party is using the badge. A badge can only be permanently withdrawn from use if a relevant conviction for misuse has been obtained under regulation 9(2) of the Disabled Persons (Badges for Motor Vehicles) (England) Regulations 2000 or if it was obtained by false representation. To reinforce this, we are amending those regulations to explicitly require that a valid badge retained because it is being misused is returned as soon as reasonably practicable to the holder (provided that the authority does not have pre-existing grounds, under the regulations, for withdrawing the badge). In practice this is likely to mean that the badge is returned first to the issuing authority by the enforcing authority and then to the holder. The issuing authority may wish to warn the holder about the seriousness of misuse when returning the badge. The act of returning the badge does not preclude the relevant authority from prosecuting any offence that has been committed, if desired.

10. It should also be noted that the new legislation does not empower the local authority to use force when attempting to retain a badge. If an enforcement officer encounters any form of resistance we would advise that they take no further action without police support.
11. Each local authority will wish to consider its own training and procedures for enforcement officers employing the new powers.

### **New definition of enforcement officer**

12. Where a badge is displayed on a motor vehicle, section 21 of the 1970 Act provides a power for constables or enforcement officers to require any person who is in the vehicle, or appears to have been in, or to be about to get into, the vehicle, to produce the badge for inspection. Until now, the definition of “enforcement officer” has been restricted to traffic wardens, civil enforcement officers and parking attendants. The definition of these officers also includes the wearing of a uniform when exercising their powers.
13. However, the 2013 Act adds to the definition of enforcement officer a person who is employed by a local authority or with whom the authority have made arrangements for the purpose of inspecting and retaining badges. This could include a direct employee of the local authority or a contractor. Furthermore, this new category of “enforcement officer” does not need to be in uniform but they do need to be authorised in writing by the authority to carry out badge inspections and retentions. They should also produce appropriate evidence of authority when exercising their powers, otherwise there is no obligation on an individual to hand their badge to the enforcement officer. In practice, the local authority should hold written documentary evidence of authorised officers and should ensure that all officers carry some form of identification authorising them to carry out inspections/badge retention.
14. The new powers therefore pave the way for the wider use of specialist Blue badge fraud teams operating in plain-clothes, and without the requirement for police presence.

### **CANCELLATION OF BADGES**

15. There is a duty on badge holders to return their badge to the issuing authority immediately if: it has expired; the holder ceases to be disabled; a replacement has been issued; the badge is damaged/faded; or because it is no longer required. In all such cases the badge would be deemed to be no longer valid and could be flagged as such on the BBIS system; similarly when a badge holder dies.
16. However, legislation has not addressed the situation where a badge has been lost or stolen. Although in practice a local authority would ‘cancel’ the original and issue a replacement, there was no explicit power to do this and the legal status of the original badge was not clear. The 2013 Act amends the 1970 Act to legally permit a local authority to cancel a badge which the holder notifies as lost or stolen. This will ensure that the legal status of all badges on the

BBIS system will be beyond doubt, although it is unlikely to alter the day-to-day practices of most local authorities.

17. The amendment also enables a local authority to cancel a badge, after notifying the holder, in any other case where it has become apparent to the authority that the holder no longer has possession of the badge.

#### **USE OF BADGES THAT ARE NO LONGER VALID**

18. Section 117 of the Road Traffic Regulation Act 1984 (“the 1984 Act”) and section 21 (4B) of the 1970 Act make wrongful use of a Blue Badge an offence. It has always been the Department’s view that wrongful use includes the continued use of a badge that should have been returned. However, this was not explicitly clear in the wording of the legislation. The 2013 Act therefore amends the 1970 Act and the 1984 Act so that wrongful use of a badge includes (but is not limited to) when a person displays a badge that should have been returned or has been cancelled.

#### **CLARIFICATION OF LAW RELATING TO ONE BADGE PER PERSON**

19. Legislation states that “a” badge (i.e. one) may be issued to a disabled person. The scheme has always worked on a one badge per person basis as the badge may be used in any vehicle and in any local authority area. This keeps the number of badges in circulation down and prevents further opportunities for abuse. Regulations reinforce this by enabling an authority to refuse to issue a badge in circumstances in which the applicant already holds another valid badge, or to recover a badge if another valid badge is (inadvertently) issued to the holder by another issuing authority.
20. This principle is not changing but we have taken the opportunity to clarify that these provisions apply to badges issued not just in England, but also Scotland, Wales and Northern Ireland. So, for example, if a local authority in England is aware that an applicant already has a valid badge issued in Scotland, Wales or Northern Ireland, they should not issue another badge. Similarly, the authority should seek to recover a badge that they have issued if they become aware that the holder has subsequently been issued with another valid badge by another UK issuing authority.

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