

## **Equality, Local Government & Communities Committee**

### **Written evidence on the Blue Badge Scheme in Wales: Eligibility and Implementation**

#### **Purpose**

1. The purpose of this paper is to provide written evidence to the Equality, Local Government and Communities Committee on the Blue Badge Scheme in Wales; Eligibility and Implementation.

#### **Background**

2. The Blue Badge Scheme provides parking concessions for people who have severe challenges to their mobility to enable them to access services and facilities. The primary legislation is the Chronically Sick and Disabled Act 1970 which places duties on local authorities to deliver the scheme in their area. The secondary legislation is the Disabled Persons (Badges for Motor Vehicles) (Wales) Regulations 2000 as amended, this sets out requirements such as the eligibility criteria, form of badge, and issue period.
3. Welsh Government cannot issue statutory guidance. It is a matter for local authorities how the scheme is administered in their area.
4. The statutory eligibility criteria are based on challenges to mobility in line with the social model of disability as adopted by Welsh Government. Eligibility is not generally linked to diagnosed medical conditions as these can demonstrate a wide range of symptoms.
5. Organisations that care for people, who would in their own right be eligible for a Blue Badge, can also be issued an Organisational Blue Badge. These account for less than 1% of badges on issue (1571 number badges December 2018).

#### **Extending Eligibility Criteria**

6. In 2002 the UK Disabled People Transport Advisory Committee (DPTAC) reported on the scheme making 47 recommendations including;
  - the eligibility criteria based on receipt of welfare benefits should match the ‘with further assessment walking criteria’;
  - children under two who needed to be accompanied by bulky medical equipment should be included within the eligibility criteria;
  - that research should be undertaken to consider extending criteria to include people with cognitive difficulties;

- temporary badges should be available for people with a clearly defined temporary mobility impairment for a period of over 12 months ( but less than three years) but requiring an independent mobility assessment.
7. Further research on eligibility was undertaken on a national basis and specifically for Welsh Government in 2012. Welsh Government also undertook a number of public consultations to seek views on extending eligibility.
  8. Wales has the widest eligibility in the UK and has made secondary legislation to extend eligibility to:
    - children under the age of three who have a condition that means they require bulky medical equipment or quick access to a vehicle to provide life saving treatment;
    - those who receive specific assessments as part of their Personal Independence Payment (PIP) to capture physical and cognitive impairments;
    - those who due to a cognitive impairment are unable to undertake any journey without assistance;
    - those with temporary impairments that last at least a year and meet the with further assessment walking criteria.
  9. Currently approximately 80,000 badges are issued a year in Wales and approximately 211,000 are on issue at any one time. The issue rate for the population in Wales is 6.8% compared to 4.2% and 4.3% in England and Scotland, respectively.
  10. A number of specific conditions have also been considered as possible eligibility criteria through research. The subsequent reports have noted that they should not be included in the eligibility criteria as they are not appropriate. For instance:
    - bowel and bladder incontinence relies on the availability of a toilet not parking concessions and people with such conditions can access 'I can't wait' cards.
    - people with mobility impairments that last less than 12 months as they would outnumber current badge holders and the scheme would be unsustainable and lose credibility.
  11. Extending eligibility is a sensitive issue that requires balancing the needs of current eligible badge holders with those who may benefit from a badge but whose access to services and facilities is not totally reliant on the scheme.

12. **Current work** – England has recently consulted on extending eligibility to people who cannot undertake any journey because it would cause overwhelming psychological distress. This has not yet been implemented and Welsh Government are being kept informed of progress in particular whether this will include people who would benefit from the scheme but are not captured by the current criteria in Wales.

## **Implementation and Consistency of the Blue Badge Scheme in Wales**

### **Assessments**

13. DPTAC in their report to the Department for Transport recommended that;

- the with further assessment criteria should be consistent nationally;
- assessments of independent mobility are required where people do not automatically qualify and should be undertaken by an accredited health professional other than the applicant's GP;
- guidance should be developed for local authorities tightly specifying the criteria under further assessment and support training in its application.

14. The Welsh Government Expert Task and Finish Group reported in 2015 with a number of recommendations including ensuring consistency of assessment and provision of independent medical assessments. Additionally, it was recommended that GPs should be removed from the assessment process as this is not an effective use of their clinical time.

15. Welsh Government has provided comprehensive guidance, model application forms and a Toolkit to assist in processing applications. The Blue Badge Toolkit was first issued to local authorities in September 2014 to assist in the verification of Blue Badge applications. Welsh Government met with Welsh local authorities in 2016/17 to review the Toolkit. A revised version was tested and issued in 2017.

16. Welsh Government provided training workshops for local authorities across Wales. Refresh training was offered to local authorities in 2018.

17. In cases where the local authority has difficulty making a determination on eligibility, the Welsh Government funds an Independent Advisory Service (IAS) to assess applicants. The IAS is generally used for people who apply under the criteria of 'unable to walk or have considerable difficulty walking' where the applicant is unable to evidence their mobility needs. It is also available for applicants who apply with hidden or temporary disabilities.

18. The IAS contract is currently being extended to ensure a continued and consistent service for local authorities in Wales.
19. The toolkit is not statutory and not all local authorities use the toolkit, however, reliance on reports from the applicants GP has dropped significantly. In December 2013 32% of badges were issued on the recommendation of the applicant's GP. In December 2018 it dropped to 9%.
20. Removing GPs from the process eases the pressure on GP services/time and promotes consistent decision making.
21. The administration of the scheme is a matter for local authorities and if a person wishes to appeal the local authority decision, it is through the local authority's appeal procedures. In some cases the local authority may seek input from the IAS. Appeal to Welsh Government is limited to cases where badges are removed or refused due to abuse of the scheme.
22. **Current work** – In February 2019 the contract for the UK national system to apply for a badge on-line through the '.gov portal' and produce badges along with the UK national data base, was awarded to a new company by the Department of Transport though the contract covers the UK.
23. The four nations, Wales, England, Northern Ireland and Scotland, have worked together to ensure the scheme reflects local needs. This work is ongoing as the new system beds in. During the development process streamlined processes were included. As a consequence, in cases where a local authority is confident, that a badge applicant has evidence to show that they will require a badge on a permanent basis, they are able to shorten application processes in issuing replacement badges.
24. Welsh Government is considering how to further promote consistent decision making by reviewing how the new contract is being delivered.

## **Fees**

25. DPTAC recommended that there should not be a fee for a Blue Badge or for replacement badges in cases where it can be proved that the badge has been stolen or is badly damaged.
26. The fee for Badges in England is £10 and in Scotland £10 to £20.
27. Badges in Wales are free to eligible applicants but cost £10 for organisational badges (1,500 organisational badges were on issue at December 2018). Local authorities can charge £10 for replacement badges.

28. There is a cost of £4.60 + vat to produce a Badge and local authorities receive £441,000 each year through the Revenue Support Grant from Welsh Government to offset this cost.

## **Appeals**

29. If an application for a Blue Badge has been declined by a local authority the applicant can appeal through the usual local authority procedures. In these circumstances there is no appeal to Welsh Government. In some limited cases where a Blue Badge has been removed or refused due to abuse or misuse of the scheme, the badge holder may apply to the Welsh Government.

## **Enforcement**

30. Both the DPTAC report and the Blue Badge Expert Task and Finish Group report made recommendations with regard to enforcement recognising that abuse of the scheme is an issue. Enforcement against abuse and misuse is essential to protect the concessions of Blue Badge holders and maintain the scheme's reputation.

31. The National Fraud Initiative Report 2018 reported that in England 1,131 people were prosecuted in 2016/17, the majority for using another person's badge. It was estimated for the financial period 2016 to 2018 the misuse of badges belonging to people who had died cost £18m.

32. The Rob Smith report in 2007 identified the following types of Blue Badge abuse covering fraudulent applications and misuse of the parking concessions:

- theft and forgery of Badges;
- use of expired Badges or those belonging to people who have died;
- non-Badge holders parking in disabled person's bays;
- non-Badge holders using Blue Badges belonging to others but not to transport the Badge holder; and
- people gaining Badges by exaggerating their need when applying.

## **Theft**

33. A badge holder in reporting theft or loss of the badge will enable the local authority to cancel the badge on the national database and issue a replacement. Local authority civil enforcement officers (CEOs) can access the national database to check the status of a badge being displayed through hand held devices. If a cancelled badge is identified as being used, they are able to issue Penalty Charge Notices (PCN).

## **Forgery**

34. The improved badge design is aimed at reducing forgery. If the design is compromised a new design badge will be put into production and rolled out over the normal three year issue period.

#### Expired Badges

35. Badges should be returned to the issuing local authority when the badge holder dies and the 'Tell Us Once' system is designed to assist in this process. Once notified that a badge holder has died, the local authority can cancel the badge on the national database.

36. Badge holders should also return their badge when they no longer meet the eligibility criteria.

37. Unfortunately, people continue to retain and use badges where the holder has died and if this is identified by CEOs they can issue a PCN.

38. **Current Work** - Welsh Government is currently looking at processes to remove badges that had been issued to people who have died.

#### Abuse of Parking Concessions

39. In 2012 a survey of 1,009 people was conducted on behalf of the Welsh Government as part of a drive to encourage greater respect for the parking rights of disabled vehicle users. It found that one in ten people in Wales admits to parking illegally in Blue Badge spaces reserved for disabled motorists.

40. The worst offenders were found to be people aged between 45–55 years; one in six confessed that they invaded these reserved spaces 'often.'

41. Local authority CEOs are responsible for on street parking and local authority car parks where they can issue a PCN if appropriate.

42. A person who parks on private land enters into a contract with the landowner. Such contracts are covered by consumer protection legislation, the main legislation being the Consumer Rights Act 2015. Consumer protection is outside the legislative competence of the National Assembly for Wales by virtue of reservations in Schedule 7A to the Government of Wales Act 2006. Therefore, it is a matter for the car park operator to provide dedicated disabled parking bays and to ensure they are used appropriately.

43. The Parking (Code of Practice) Act 2019 has just received Royal Assent. Welsh Government has been working with the Ministry of Housing, Communities and Local Government in the development of this Act.

44. **Current Work** - Welsh Government is currently working with stakeholders to consider how this will be implemented in Wales and the consequences for the Blue Badge scheme; provision of spaces and enforcement.

## Misuse of Parking Concessions

45. Each badge is issued to the badge holder with a booklet 'The Blue Badge Scheme: Rights and Responsibilities in Wales'. This booklet explains how the badge can be used, the available concessions and the responsibilities on the badge holder. It includes that the badge holder must be present when the badge is being used and must not simply sit in the vehicle to enable others to benefit from the available concessions. During the application process the badge holder agrees to abide to the rights and responsibilities.
46. Welsh Government along with the other UK administrations have agreed to review the booklet in 2019.

## Fraudulent Applications

47. The Welsh Government toolkit is designed to assist local authorities in verifying applications for a Blue Badge. It includes an assessment matrix that has not been disclosed and this is directly comparable with a Decision Notice (ref: FS50434032) issued by the Information Commissioner in respect of the Whittington Hospital NHS Trust available at: [https://ico.org.uk/media/action-weve-taken/decision-notice/2012/743724/fs\\_50434032.pdf](https://ico.org.uk/media/action-weve-taken/decision-notice/2012/743724/fs_50434032.pdf) The Decision Notice explains that the Whittington Hospital NHS Trust also withheld the detailed scoring system used in assessing Blue Badge applications under the Section 31(1)(a) exemption which the Information Commissioner upheld.
48. The disclosure of the detailed scoring system used when assessing Blue Badge applications would be likely to lead to abuse of the Blue Badge scheme by those who would be prepared to use fraud and/deception to meet the eligibility criteria. Disclosure of the scoring criteria would make it very easy for an individual to acquire relevant aids and/or control performance to result in it being worse than a predetermined level. If this was the consequence, a Blue Badge would be acquired by deception with individuals engaging in behaviour of a criminal nature.
49. Unfortunately, despite care being taken to make a correct decision, there have been reported incidents of people who have been issued a Blue Badge behaving in a way that demonstrates they do not meet the eligibility criteria.

## **Challenges**

50. Enforcement of the Blue Badge scheme in Wales is dependant on local CEOs. Welsh Government have identified good practice and arranged workshops with the local authorities in 2017.

51. A pilot project was agreed to implement good practice. However, following an invitation to local authorities to apply for additional funds only one tender was received. It was from a local authority who intended to outsource the work to a third party organisation and it did not meet the project criteria.

52. In addition, Welsh Government has discussed improved enforcement with private car parking operators for supermarkets but there is little appetite to improve enforcement. Therefore, enforcement is still an outstanding issue.

53. **Current Work** - Welsh Government continue to work with representatives of the parking industry to seek ways to improve enforcement and ensure that badge holders are able to access the concessions meant for them.

### **Support and Information for Blue Badge Applicants**

54. In May 2017 Welsh Government published the document 'Who is eligible for a Blue Badge?' This has been distributed widely through Wales and details the eligibility criteria and the information an applicant needs to present in support of their application for a badge.

55. Each badge is issued to the badge holder with a booklet 'The Blue Badge Scheme: Rights and Responsibilities in Wales'. This booklet explains how the badge can be used, the available concessions and the responsibilities on the badge holder. It includes that the badge holder must be present when the badge is being used and must not simply sit in the vehicle to enable others to benefit from the available concessions.

56. **Current work** – The four nations have agreed to work together to;

- Review the guidance documents for both badge holders, organisation badge holders and local authorities, and
- Explore improvements to enforcement.