

Constitutional and Legislative Affairs Committee

Meeting Venue:
Committee Room 2 – Senedd

Meeting date:
20 February 2012

Meeting time:
14:30

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



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Agenda

- 1. Introduction, apologies, substitutions and declarations of interest**
- 2. Instruments that raise no reporting issues under Standing Order 21.2 or 21.3**

Negative Resolution Instruments

CLA85 – The Integrated Family Support Teams (Composition of Teams and Board Functions) (Wales) Regulations 2012

Negative Procedure. Date made 30 January 2012. Date laid 31 January 2012. Coming in to force date 28 February 2012

CLA86 – The Integrated Family Support Teams (Family Support Functions) (Wales) Regulations 2012

Negative Procedure. Date made 30 January 2012. Date laid 31 January 2012. Coming in to force date 28 February 2012

CLA87 – The Integrated Family Support Teams (Review of Cases) (Wales) Regulations 2012

Negative Procedure. Date made 30 January 2012. Date laid 31 January 2012. Coming

in to force date 28 February 2012

CLA88 – The Seed Marketing (Wales) Regulations 2012

Negative Procedure. Date made 1 February 2012. Date laid 2 February 2012. Coming in to force date 27 February 2012

CLA89 – The Smoke Control Areas (Exempted Fireplaces) (Wales) Order 2012

Negative Procedure. Date made 1 February 2012. Date laid 2 February 2012. Coming in to force date 27 February 2012

CLA90 – The Red Meat Industry (Designation of Slaughterers and Exporters) (Wales) Order 2012

Negative Procedure. Date made 1 February 2012. Date laid 2 February 2012. Coming in to force date 1 April 2012

CLA91 – The Education (School Day and School Year) (Wales) (Amendment) Regulations 2012

Negative Procedure. Date made 1 February 2012. Date laid 2 February 2012. Coming in to force date 24 February 2012

CLA93 – The Plant Health (Import Inspection Fees) (Wales) (Amendment) Regulations 2012

Negative Procedure. Date made 2 February 2012. Date laid 7 February 2012. Coming in to force date 29 February 2012

CLA94 – The Contaminated Land (Wales) (Amendment) Regulations 2012

Negative Procedure. Date made 3 February 2012. Date laid 7 February 2012. Coming in to force date 6 April 2012

Affirmative Resolution Instruments

None

3. Instruments that raise issues to be reported to the Assembly under Standing Order 21.2 or 21.3

Negative Resolution Instruments

CLA92 – The Carers Strategies (Wales) (Amendment) Regulations 2012 (Pages 1 – 11)

Negative Procedure. Date made 3 February 2012. Date laid 7 February 2012. Coming in to force date 29 February 2012

CLA95 – The Disabled Persons (Badges for Motor Vehicles) (Wales) (Amendment) Regulations 2012 (Pages 12 – 57)

Negative Procedure. Date made 7 February 2012. Date laid 8 February 2012. Coming in to force date 1 March 2012

Affirmative Resolution Instruments

None

4. European Commission draft proposal for a directive on public procurement – Possible Subsidiarity Issue (Pages 58 – 60)

Papers:

CLA(4)-04-12(p1) – Letter from the Chair of the Enterprise and Business Committee dated 7 February 2012

5. Date of the next meeting (Pages 61 – 63) 27 February 2012

Papers to note:

CLA(4)-03-12– Report of the meeting 6 February 2012

Transcript

View the [meeting transcript](#).

Agenda Item 3.1

Constitutional and Legislative Affairs Committee

(CLA(4)-04-11)

CLA92

Constitutional and Legislative Affairs Committee Draft Report

Title: The Carers Strategies (Wales) (Amendment) Regulations 2012

Procedure: Negative

These Regulations are made under the Carers Strategies (Wales) Measure 2010. Regulation 2 of these Regulations makes an amendment to correct an editing error in The Carers Strategies (Wales) Regulations 2011 ("2011 Regulations").

Regulation 9(7) of the 2011 Regulations requires designated authorities to publish their strategies in both English and Welsh unless it is not reasonably practicable to do so.

Regulation 3 of these Regulations revokes regulation 9(7) of the 2011 Regulations to avoid any possible implication that the English and Welsh versions of the strategies are treated differently.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument

Merits Scrutiny

The following points are identified for reporting under Standing Order 21.3 in respect of this instrument.

A Merits point is identified under Standing Order 21.3 to draw the Assembly's attention to the fact that these Regulations are made pursuant to the Deputy Ministers response in the Plenary debate on the 6th December 2011 to the Committee's Report dated 2 December 2011 on the 2011 Regulations.

[Standing Order 21.3(ii) - that it is of political or legal importance or gives rise to issues of a public policy likely to be of interest to the Assembly.]

Legal Advisers

Constitutional and Legislative Affairs Committee

February 2012

2012 No. 282 (W. 46)

**NATIONAL HEALTH
SERVICE, WALES**

SOCIAL CARE, WALES

**The Carers Strategies (Wales)
(Amendment) Regulations 2012**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under the Carers Strategies (Wales) Measure 2010.

Regulation 2 of these Regulations makes an amendment to correct an editing error in The Carers Strategies (Wales) Regulations 2011 (“2011 Regulations”).

The 2011 Regulations apply to local health boards and local authorities and in part to the Velindre NHS Trust and to the Welsh Ambulance Services NHS Trust. These are referred to as “designated authorities”. The 2011 Regulations require each local health board in Wales and the local authorities which fall within their area to work together in preparing and publishing a strategy setting out how they will work together to assist and include carers in the arrangements made for those they care for.

Regulation 9(7) of the 2011 Regulations requires designated authorities to publish their strategies in both English and Welsh unless it is not reasonably practicable to do so.

Regulation 3 of these Regulations revokes regulation 9(7) of the 2011 Regulations to avoid any possible implication that the English and Welsh versions of the strategies are treated differently.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As they only make minor amendments to the existing Regulations it was not considered necessary to carry out a regulatory impact assessment as to the likely

costs and benefits of complying with these Regulations.

2012 No. 282 (W. 46)

**NATIONAL HEALTH
SERVICE, WALES**

SOCIAL CARE, WALES

**The Carers Strategies (Wales)
(Amendment) Regulations 2012**

Made 3 February 2012

Laid before the National Assembly for Wales

7 February 2012

Coming into force 29 February 2012

The Welsh Ministers, in exercise of the powers conferred by sections 5(1) and (2) and 10(2) of the Carers Strategies (Wales) Measure 2010⁽¹⁾, make the following Regulations.

Title, commencement and application

1.—(1) The title of these Regulations is The Carers Strategies (Wales) (Amendment) Regulations 2012.

(2) These Regulations come into force on 29 February 2012.

(3) These Regulations apply in relation to Wales.

Amendment of The Carers Strategies (Wales) Regulations 2011

2.—(1) The Carers Strategies (Wales) Regulations 2011⁽²⁾ are amended as follows.

(2) In the Schedule, in the right hand column (Awdurdodau Lleol) in the Welsh text, in the entry opposite “Bwrdd Iechyd Prifysgol Betsi Cadwaladr” in the left hand column (Bwrdd Iechyd Lleol), after “Sir y Fflint” insert “, Gwynedd”.

(1) 2010 nawm 5.

(2) S.I. 2011/2939 (W.315).

Revocation

3. Regulation 9(7) of The Carers Strategies (Wales) Regulations 2011 is revoked.

Gwenda Thomas

Deputy Minister for Children and Social Services
under authority of the Minister for Health and Social
Services, one of the Welsh Ministers

3 February 2012

Explanatory Memorandum to the Carers Strategies (Wales) (Amendment) Regulations 2012

This Explanatory Memorandum has been prepared by the Department for Health, Social Services and Children and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Carers Strategies (Wales) (Amendment) Regulations 2012 and I am satisfied that the benefits outweigh any costs.

Gwenda Thomas AM

Deputy Minister for Children and Social Services under authority of the Minister for Health and Social Services, one of the Welsh Ministers.

3 February 2012

1. Description

1.1 The Carers Strategies (Wales) (Amendment) Regulations 2012 are derived from the Carers Strategies (Wales) Measure 2010 (“the Measure”). The Measure was granted Royal Assent on 10 November 2010. The Measure provides for strategies to be prepared and published by certain public bodies about arrangements for the benefit of unpaid carers. These are carers that do not receive payment for their caring work. Throughout this Explanatory Memorandum these carers are referred to as ‘carers’ and ‘unpaid carers’.

1.2 The Measure places a duty on a ‘designated authority’ or two or more ‘designated authorities’ to work together to prepare, publish and implement local information and consultation strategies for the benefit of carers. In this initial roll out of the Measure, the first ‘designated authorities’ are the seven Local Health Boards, Velindre NHS Trust, the Welsh Ambulance Service NHS Trust and local authorities. Local Health Boards and the two NHS Trusts are the ‘lead authorities’ charged with coordinating the development of the local strategies.

1.3 The strategies will set out arrangements for the provision of information and guidance for carers to enable them to carry out their caring role effectively and set out arrangements for the full involvement of carers in decisions regarding the provision of services to them and the person(s) they care for.

2. Matters of Special Interest to the Constitutional and Legislative Affairs Committee

2.1 The Committee considered the Carers Strategies (Wales) Regulations 2011 at its meeting of 28 November 2011. It reported that regulation 9(7) which states that “the strategy must be published in both English and Welsh *unless it is not reasonably practicable to do so*” ran counter to the principle of equality between the English and Welsh languages. The Chair of the Committee raised this issue during the plenary debate on the Regulations on 6 December and the Deputy Minister undertook to revoke this regulation. The Chair of the Committee wrote to the Deputy Minister for Children and Social Services formally setting out these concerns and in her reply dated 10 January 2012, the Deputy Minister stated that as public authorities are required under the Welsh Language Act 1993 to produce information that would be of interest to the public in both English and Welsh in any case, that she would revoke this particular Regulation.

2.2 It has also been drawn to the attention of officials that in the Welsh version of the Carers Strategies (Wales) Regulations 2011, ‘Gwynedd’ does not appear in the list of ‘designated authorities’ within the Welsh text of the Schedule to those Regulations.

2.3 Therefore, the Carers Strategies (Wales) (Amendment) Regulations 2012 deal with these issues by revoking regulation 9(7) and by amending the Welsh text of the Schedule to include ‘Gwynedd’.

3. Legislative background

3.1 The powers to make the Carers Strategies (Wales) (Amendment) Regulations 2012 are contained in sections 5(1) and (2) and 10(2) of the Measure.

3.2 The Carers Strategies (Wales) Regulations 2011 were subject to the affirmative procedure and were laid before the National Assembly for Wales on 15 November 2011. Section 10 (5)(b) of the Measure states that “A statutory instrument containing the first Regulations made by the Welsh Ministers under each of sections 2(1), 3(2), 4, 5(1) and 6(4), ...must not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales”.

3.3 As these Regulations are not the first regulations made under section 5(1) the Carers Strategies (Wales) (Amendment) Regulations 2012 are subject to the negative resolution procedure as set out in section 10(3) of the Measure.

4. Purpose & intended effect of the legislation

4.1 The Constitutional and Legislative Affairs Committee, in scrutinising the Carers Strategies (Wales) Regulations 2011, considered that regulation 9(7) ran counter to the principle of equality between the Welsh and English language. This was subsequently raised in plenary on discussing the motion to approve the Regulations. The Deputy Minister for Children and Social Services agreed to bring forward these amending Regulations and revoke regulation 9(7) to avoid any implication that the Welsh and English versions of the strategies are treated differently.

4.2 The Regulations also correct a minor editing error to include ‘Gwynedd’ in the Welsh text of the Schedule to the Carers Strategies (Wales) Regulations 2011. This will ensure consistency and clarity between the Welsh and English texts.

5. Regulatory Impact Assessment

A full regulatory impact assessment was undertaken in relation to the Carers Strategies (Wales) Regulations 2011, and for convenience, a copy is included below. As these regulations only make minor amendments to the existing Regulations it was not considered necessary to carry out a regulatory impact assessment as they make technical amendments that have no major policy impact.

Regulatory Impact Assessment

1. Options

Option 1 - Do nothing

1.1 Not introducing the Regulations will mean that the policy intention of the National Assembly for Wales in passing the Measure will not be given effect and carers will not benefit from having the duty placed upon the 'designated authorities' to meet their information and consultation needs. During the scrutiny process associated with the Measure, it was agreed that the detail of work to be taken forward would be provided for in the Regulations. The Measure simply describes the duties to be placed on 'relevant authorities' in relation to the development of local strategies and sets out the Regulation making powers under sections 2(1), 3(2), 4, 5(1) and 6(4).

Option 2 – Bring all of the Regulations into force

1.2 Introducing all of the Regulations will mean that the policy intention of the National Assembly for Wales in passing the Measure is given effect. It will mean that the seven Local Health Boards, Velindre NHS Trust, the Welsh Ambulance Service NHS Trust and local authorities will have clear, detailed requirements placed on them to prepare, publish and implement a local strategy that will meet the information and consultation needs of carers.

2. Costs and Benefits

Option 1 - Do nothing

2.1 Not introducing the Regulations will mean that no additional financial costs are incurred by the 'designated authorities' but that no benefit will be brought to carers in relation to meeting their information and consultation needs. Another significant cost arising from not supporting carers in these ways include the possibility of increased numbers of admissions to hospital of cared for persons.

Option 2 – Bring all of the Regulations into force

2.2 Introducing all of the Regulations will mean that financial costs will be borne by the 'designated authorities'. The costs will be met by funding from the Welsh Government. The level of funding was agreed during the Measure's scrutiny process (£900,000 in 2012-13; £1.7m in 2013-14; £3.2m in 2014-15) and the formula for its allocation has been agreed by the Deputy Minister for Social Services and Children and Minister for Health and Social Services. The drafting of a specific Chapter that dealt with the information and consultation needs of young carers was also agreed during the scrutiny process and funding for that purpose is also provided: £80,000 in 2012-13; £150,000 in 2013-14 and £200,000 in 2014-15.

2.3 The funding is being allocated to LHBs in recognition of their role as 'lead authorities' and the Deputy Minister for Social Services and Children's clear

wish is for the NHS to be in the lead in taking forward this legislation. The formula for allocation is the standard LHB Hospital, Community and Health Services formula and the allocation for 2012-13 is set out below:

<u>LHB</u>	<u>Allocation</u>
Abertawe Bro Morgannwg	72,064
Aneurin Bevan	81,944
Betsi Cadwaladr	97,436
Cardiff and Vale	55,428
Cwm Taf	43,451
Hywel Dda	53,493
Powys	16,184
Velindre NHS Trust	20,000
Welsh Ambulance Service NHS Trust	10,000

This funding will be distributed in the first week of April 2012. Ministers will require a short joint Local Health Board/Social Services report by 1 September 2012 confirming how this funding has been spent and the good practice generated.

The second allocation will be made available to support the implementation of the Measure. The distribution for the second allocation will also include dedicated funding for delivering the Young Carers Chapter of local strategies and is detailed below:

<u>LHB</u>	<u>Main Allocation</u>	<u>Young Carers</u>
Abertawe Bro Morgannwg	72,064	13,726
Aneurin Bevan	81,944	15,608
Betsi Cadwaladr	97,436	18,559
Cardiff and Vale	55,428	10,558
Cwm Taf	43,451	8,276
Hywel Dda	53,493	10,189
Powys	16,184	3,083
Velindre NHS Trust	20,000	
Welsh Ambulance Service NHS Trust	10,000	

This funding will be allocated to organisations following Ministerial sign-off of the local strategies towards the close of 2012, as provided for in Regulation 8. Funding for subsequent financial years will be confirmed in due course.

3. Consultation

3.1 A public consultation on the draft Regulations and Guidance was held between 31 March 2011 and 30 June 2011. The documents can be found at this location and are available in English, Welsh, Everyday English and Easy Read English:

<http://wales.gov.uk/consultations/healthsocialcare/carers/?lang=en&status=closed>

64 responses were received from the following types of organisations:

Individual (including groups of individuals)	11
LHB/NHS Trust	8
Professional/Representative organisation	3
Social Services	12
Third sector organisation	27
Other organisation	3

3.2 A report of the consultation that sets out the main issues raised and whether they have been accepted or rejected for inclusion in the final Regulations and Guidance can be found through the above link.

3.3 A Carers Measure Stakeholder Advisory Group was established at the commencement of the legislative process to develop the Measure and have contributed advice throughout. The Group's membership included representation from the NHS, Social Services and the Third Sector.

4. Post implementation review

4.1 The Regulations commit LHBs, the two NHS Trusts and Social Services to monitor the implementation of Strategies and set out what those arrangements will be.

4.2 The Regulations also commit LHBs, the two NHS Trusts and Social Services to review the implementation of the Strategies after an 18 month period and for them to be replaced every three years.

4.3 Welsh Ministers are also considering establishing a group which will be led by officials to oversee the implementation of the Measure. The group would include senior representatives from the NHS, Social Services and the Carers Third Sector.

Constitutional and Legislative Affairs Committee

(CLA(4)-04-12)

CLA95

Constitutional and Legislative Affairs Committee Draft Report

Title: The Disabled Persons (Badges for Motor Vehicles) (Wales) (Amendment) Regulations 2012

Procedure: Negative

These Regulations will amend The Disabled Persons (Badges for Motor Vehicles) (Wales) Regulations 2000 (“The 2000 Regulations”). The Regulations stipulate a new design for the Blue Badge, the Blue Badge fee, improves the administration and enforcement of the scheme, and makes a minor amendment to the eligibility criteria.

Technical Scrutiny

The following point is identified for reporting under Standing Order 21.2 in respect of this instrument.

The English version of these Regulations refers to Schedule 1; however the Welsh version of these Regulations merely refers to the number 1, but has omitted to refer to “Schedule”. Consequently, the insertion of Schedule 1 by regulation 2 (9) (c) of the Welsh version into the 2000 Regulations will be inoperable, as Schedule 1 does not exist.

[S.O. 21.2 (vi) that its drafting appears to be defective or it fails to fulfil statutory requirements; and (vii) that there appear to be inconsistencies between the meaning of its English and Welsh texts].

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument

Legal Advisers

Constitutional and Legislative Affairs Committee

February 2012

The Government has responded as follows:

INSERT RESPONSE

2012 No. 309 (W. 50)

ROAD TRAFFIC, WALES

**The Disabled Persons (Badges for
Motor Vehicles) (Wales)
(Amendment) Regulations 2012**

EXPLANATORY NOTE

(This note is not part of the Regulations)

A disabled person's badge (known as a "Blue Badge") enables the holder to benefit from a range of parking concessions and exemptions from certain charges which apply to other motorists. The Disabled Persons (Badges for Motor Vehicles) (Wales) Regulations 2000 (S.I. 2000/1786) ("the Principal Regulations") make provision regarding the issue of the badges by local authorities.

These Regulations amend the Principal Regulations, primarily, by requiring that the design and manufacture of badges must comply with substantially more sophisticated technical requirements, designed to mitigate the risk of forgery.

Other significant amendments include removing the fee for a badge for new applicants and for renewals of existing badges, raising the maximum fee from £2 to £10 in the case of replacement badges and for organisational badges, and enabling local authorities to refuse to issue or to withdraw badges following a single conviction under the legislation used to prosecute fraudulent misuse of badges.

A full regulatory impact assessment of the effect that the amendments will have on the cost to business and the voluntary sector is available from (insert details).

2012 No. 309 (W. 50)

ROAD TRAFFIC, WALES

**The Disabled Persons (Badges for
Motor Vehicles) (Wales)
(Amendment) Regulations 2012**

Made 7 February 2012

Laid before the National Assembly for Wales
8 February 2012

Coming into force 1 March 2012

The Welsh Ministers, in exercise of the powers conferred upon the Secretary of State by section 21 of the Chronically Sick and Disabled Persons Act 1970 (1), transferred to the National Assembly for Wales(2), and now vested in them(3) make the following Regulations.

Title, commencement and application

1.—(1) These regulations are called the Disabled Persons (Badges for Motor Vehicles) (Wales) (Amendment) Regulations 2012 and come into force on 1 March 2012.

(2) These Regulations apply in relation to Wales.

Amendment of Regulations

2.—(1) The Disabled Persons (Badges for Motor Vehicles) (Wales) Regulations 2000(4) are amended in accordance with paragraphs (2) to (9).

(2) In regulation 2 (interpretation)—

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- (1) 1970 c.44.
(2) Powers of the Secretary of State under section 21 of the Chronically Sick and Disabled Persons Act 1970 were transferred to the National Assembly for Wales by article 2, Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672).
(3) Powers of the National Assembly for Wales under section 21 of the Chronically Sick and Disabled Persons Act 1970 were transferred to the Welsh Ministers by virtue of paragraph 30, Schedule 11 to the Government of Wales Act 2006 (c.32).
(4) S.I. 2000/1786.

- (a) in paragraph (1)—
 - (i) after the definition of “the 1984 Act” insert—

““date of issue” (“*dyddiad rhoi*”) means, the date on which a disabled person’s badge is first valid for use;”

- (b) replace paragraph (3) with—

“(3) In these Regulations “relevant conviction” (“*collfarn berthnasol*”) means any conviction for an offence specified in paragraph (4) committed in relation to a disabled person’s badge of—

- (a) the holder of that badge; or
- (b) any other person using that badge with the knowledge of the holder at any time during which the offence was being committed.”; and

- (c) replace paragraph (4) with—

“(4) The offences mentioned in paragraph (3) are any offence—

- (a) under section 21(4B) of the 1970 Act;
- (b) under section 115 or 117 of the 1984 Act; or
- (c) involving dishonesty or deception under any other provision of the 1970 Act, of the 1984 Act or of any other legislation applicable in the United Kingdom, or any part of the United Kingdom.”.

(3) In regulation 4 (descriptions of disabled persons) in paragraph (1)(a) replace “3” with “2”.

(4) In regulation 6 (fee for issue and period of issue of a badge)—

- (a) replace paragraph (1) with—

“(1) In the case of an individual’s badge which has a date of issue on or after 1st April 2012, a local authority may not charge a fee for the issue of a badge where—

 - (a) the applicant has not previously held a disabled person’s badge; or
 - (b) the applicant is applying to renew an existing disabled person’s badge, where that badge has expired or is about to expire.”

- (b) after paragraph (1) insert—

“(2) In the case of an organisational badge which has a date of issue on or after 1st April 2012, a local authority may not charge a fee of more than £10 for the issue of a badge where—

 - (a) the applicant has not previously held a disabled person’s badge; or

- (b) the applicant is applying to renew an existing disabled person's badge, where that badge has expired or is about to expire.”
- (c) After paragraph (2) insert—
 - “(3) In the case of a replacement individual's badge or a replacement organisational badge issued in accordance with regulation 7 which has a date of issue on or after 1st April 2012, a local authority may not charge a fee of more than £10 for the issue of that replacement badge.”
- (d) re-number existing paragraph (2) as paragraph (4).
- (5) In regulation 7—
 - (a) for the heading substitute “Replacement badges”;
 - (b) in paragraph (1)—
 - (i) after the word “vehicle” insert “or which otherwise prevents it from being identified correctly or distinguished from a forgery”; and
 - (ii) replace “with the word “duplicate” marked on the front” with “in a form which identifies by consecutive numbering each successive badge issued to the disabled person or organisation (as the case may be) by the issuing authority.”.
- (6) In regulation 8 (grounds for refusal to issue a badge)—
 - (a) in paragraph (2)(a)—
 - (i) delete “or under the 1982 Regulations”; and
 - (ii) replace “at least three relevant convictions” with “a relevant conviction”;
 - (b) at the end of paragraph (2)(b)(i) insert “or that he or she is resident in the area of that local authority”;
 - (c) at the end of paragraph (2)(c) delete “or”; and
 - (d) after paragraph (2)(d)(ii) insert—
 - “(e) the applicant already holds a valid badge which has been issued by another issuing authority.”.
- (7) In regulation 9 (return of badge to issuing authority)—
 - (a) at the end of paragraph (1)(e) insert “or has suffered any other damage which otherwise prevents it from being identified correctly or distinguished from a forgery”;

- (b) at the end of paragraph (1)(f) insert “or another valid badge is issued to the holder by another issuing authority.”;
 - (c) in paragraph (2)(a) replace “at least three relevant convictions” with “a relevant conviction”; and
 - (d) at the end of paragraph (2)(b) insert “or that the holder has purported to transfer the badge to another person”.
- (8) Replace regulation 11 (form of badge) with—

“Form of badge

11.—(1) Paragraph (2) applies in respect of a badge with a date of issue before 1st April 2012 and paragraph (3) applies in respect of a badge with a date of issue on or after that date.

(2) A disabled person’s badge is in the prescribed form if—

- (a) the front and reverse of the badge are in the form shown in—
 - (i) Part I of the Schedule in the case of an individual’s badge; or
 - (ii) Part II of the Schedule in the case of an organisational badge; and
- (b) the badge complies with the specifications in Part III of the Schedule.

(3) A disabled person’s badge is in the prescribed form if—

- (a) the front and reverse of the badge are in the form shown in—
 - (i) Part IA of the Schedule in the case of an individual’s badge (with the omission of the word “sample” where it appears); or
 - (ii) Part IIA of the Schedule in the case of an organisational badge (with the omission of the word “sample” where it appears); and
- (b) the badge complies with the specifications in Part IIIA of the Schedule.”

(9) In the Schedule—

- (a) in the heading to Part I, delete the words “Form of”;
- (b) after the heading “Individual’s Badge”, insert (with a date of issue before 1st April 2012);
- (c) after Part I, insert the provision set out in Schedule 1 to these Regulations;

- (d) in the heading to Part II delete the words “Form of”;
- (e) after the heading “Organisational Badge”, insert “(with a date of issue before 1st April 2012)”;
- (f) after Part II, insert the provision set out in Schedule 2 to these Regulations;
- (g) in Part III (Specifications for Badge), after the heading “Specifications for Badge”, insert “(with a date of issue before 1st April 2012)”;
and
- (h) after Part III, insert the provision set out in Schedule 3 to these Regulations.

Carl Sargeant

Minister for Local Government and Communities, one
of the Welsh Ministers

7 February 2012

SCHEDULE 1

Regulation 11(3)(a)(i)

“PART IA

INDIVIDUAL’S BADGE

(WITH A DATE OF ISSUE ON OR AFTER 1
APRIL 2012)

SCHEDULE 2

Regulation 11(3)(a)(ii)

“PART IIA

ORGANISATIONAL BADGE

(WITH A DATE OF ISSUE ON OR AFTER 1
APRIL 2012)

SCHEDULE 3

Regulation 11(3)(b)

“PART IIIA

SPECIFICATIONS FOR BADGES

(WITH A DATE OF ISSUE ON OR AFTER 1
APRIL 2012)

1. All Badges

The specifications applicable to all badges are
as follows—

- (a) the badge must be 106 millimetres in height, 148 millimetres in width (with 5mm radius rounded corners) and 720 microns in thickness, with height and width tolerances of plus or minus 1 millimetre and a thickness tolerance of plus or minus 20 microns;
- (b) the badge must be printed on white polyvinyl chloride core sheets and all print must be fused with clear plastic outer layers;
- (c) the badge must be printed with a unique serial number, comprising a series of numbers and letters that

identify key information about the badge and the holder, including the consecutive number of each replacement badge issued to the badge holder by the issuing authority;

- (d) the background on the front and reverse sides of the badge must be lithographically security printed to include fine line guilloche, numismatics, variable width text workings and other fine line structures which are consistent with paragraph (l);
- (e) a security printed, tamper evident background must be printed in the boxes which identify the expiry date and number of the badge and the name of the holder;
- (f) micro text features which are only visible under magnification must be printed on the front and reverse sides of the badge;
- (g) embossed tactile and Braille features (which incorporate visual, line structure patterns) must be included on the front side of the badge, without any corresponding indentation on the reverse side of the badge;
- (h) the wheelchair user symbol that appears on the front side of the badge must be a security hologram enclosed within a square with sides each measuring 30 millimetres, incorporating an image flip, micro-text, nano-text, a separate nano-feature and the design of the wheelchair logo against a background of the words “blue badge”;
- (i) the rear side of the badge must contain a variable bar code which identifies the expiry date of the badge;
- (j) the coloured block which appears on the front side of all badges issued during any calendar year must be a consistent year identifier colour which differs substantially from the colours used in prior calendar years;
- (k) the badge must be constructed so that it is heat resistant and stable to a temperature of at least 120 degrees Celsius (and a local authority must satisfy itself that badges it proposes to issue are compliant with this requirement (before issuing any such badges) by obtaining a report verifying such compliance (by reference to a

sample badge) from an appropriate body); and

- (l) the badge must include such additional security features as will further mitigate the risk of forgery by, so far as practicable, preventing the badge from being copied readily and allowing genuine badges to be distinguished from forgeries.

For the purposes of paragraph (k) an “appropriate body” means a body accredited to Standard ISO 9001:2008 (Quality Management Systems) (prepared by the International Organisation for Standardization)⁽¹⁾ and which, in the opinion of the local authority, has the necessary expertise to provide the report.

2. Individual’s Badges

The additional specifications applicable to an individual’s badge are as follows—

- (a) subject to paragraphs (b) and (c), the rear side of an individual’s badge must contain a close up digital photograph of the head and shoulders of the badge holder. The photograph must have a strong definition between face and background and must be—
 - (i) in colour;
 - (ii) 45 millimetres in height and 35 millimetres in width (passport size);
 - (iii) taken—
 - (aa) within a month prior to the date of the application;
 - (bb) against a light grey or cream background;
 - (iv) undamaged;
 - (v) free from “red eye”, shadows, reflection or glare from spectacles;
 - (vi) of the full head of the holder (without any other person visible or any covering, unless it is worn for religious beliefs or medical reasons)—
 - (aa) facing forward;
 - (bb) with nothing covering the face;

(1) The British Standards Institution publication of the Standard has the ISBN 9780580687389

- (cc) looking straight at the camera;
 - (dd) with a neutral expression and mouth closed; and
 - (ee) with eyes open and clearly visible (without sunglasses or tinted spectacles and without hair or spectacle frames obscuring the eyes);
 - (vii) in sharp focus and clear;
 - (viii) printed professionally or in digital format; and
 - (ix) a true likeness, without amendment.
- (b) paragraph (a) does not apply to a badge issued pursuant to an application made by a disabled person if the issuing authority is satisfied that the estimated life expectancy of that person is less than six months from the date of the application, in which case the space that would otherwise include a photograph must contain a copy of the flag that appears on the front of the badge.
 - (c) paragraphs (a)(vi)(cc) and (a)(vi)(dd) do not apply to photographs of children aged five years and under.
 - (d) the variable bar code on the rear side of the badge must identify the year of birth and (in code) the gender of the holder.
 - (e) the serial number printed on the badge must identify the month and year of birth and (in code) the gender of the holder.

3. Organisational badges

The additional specifications applicable to an organisational badge are as follows—

The reverse side of an organisational badge must contain a colour copy of the logo (if any) of the organisation, which must be 45 millimetres in height and 35 millimetres in width. If the organisation does not have a logo, the space that would otherwise include the logo must contain a copy of the flag that appears on the front of the badge.”

Explanatory Memorandum to The Disabled Persons (Badges for Motor Vehicles) (Wales) (Amendment) Regulations 2012

This Explanatory Memorandum has been prepared by the Department for Local Government and Communities and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.2

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Disabled Persons (Badges for Motor Vehicles) (Wales) (Amendment) Regulations 2012.

I am satisfied that the benefits outweigh any costs.

Carl Sargeant

Minister for Local Government and Communities

7 February 2012.

1. Description

These Regulations will amend The Disabled Persons (Badges for Motor Vehicles) (Wales) Regulations 2000 Statutory Instruments 2000 No. 1786 (W.123). The Regulations stipulate a new design for the Blue Badge, the Blue Badge fee, improves the administration and enforcement of the scheme, and makes a minor amendment to the eligibility criteria.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

None

3. Legislative background

The Regulations are made under section 21 of the Chronically Sick and Disabled Persons Act 1970 ("the CSDPA"). This instrument is subject to annulment by the National Assembly for Wales (the negative procedure).

The Regulations will come into force on 1 March 2012.

4. Purpose & intended effect of the legislation

These regulations will introduce changes to the disabled persons Blue Badge scheme in Wales in the following areas :-

- i. The design of the Blue Badge;
- ii. The Blue Badge Fee;
- iii. Minor amendments to the eligibility criteria; and
- iv. Grounds by which a local authority may refuse to issue or withdraw a Blue Badge.

Blue Badge Improvement Service

The UK Government and Devolved Administrations have been developing the Blue Badge Improvement Service (BBIS) with local authorities. Following a competitive procurement process the Department for Transport signed a contract in May 2011 with Northgate Information Solutions and Payne Security who will deliver the service. The service will provide for the secure printing and distribution of a new, high specification badge that will be harder to copy and forge. It will also establish a common database of all badges that have been issued by local authorities and key details on badge holders to enable verification checks by enforcement officers anywhere in Great Britain and automated checks by the local authority at application stage to reduce and prevent fraud.

The suppliers are investing the capital needed to establish the system, in return for a charge per badge that local authorities will pay directly to the

supplier for each badge issued. The price has been fixed for the life of the five year contract at £4.60 per badge issued (plus VAT).

Blue Badge Design

The existing badge design is very easy to copy and to forge, and important details such as the expiry date can be altered. The new badge design has been developed on a UK wide basis to provide a more secure, tamper free badge that, along with the national database, will improve enforcement and prevent misuse of the Scheme. The new badges are made of durable materials to prevent problems associated with the current badge around fading and normal wear and tear. The regulations specify the design features of the new badge and there is a diagrammatic representation and detailed specification in the Schedules.

The new badge will be phased in over three years as current Blue Badges are renewed, replaced or are removed from circulation when no longer required. Approximately 80,000 badges will be issued annually. The Schedule requires that an up to date photograph of the badge holder be 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. The standards for the digital photograph set out in the Schedule are the same as those used for passports and driving licences.

The regulations will permit Local Authorities to replace a badge that has been lost, stolen, tampered with or destroyed, or has become so damaged or faded that it is no longer legible when read through a car windscreen. The replacement badges will use a unique numbering system to show that it is a replacement.

This will allow better monitoring of the badges in circulation and remove those that due to their condition cannot be verified as being a valid badge.

Blue Badge Fee

Since 1983 local authorities have been able to charge the badge holder up to £2.00 for a Blue Badge, although not all authorities do so. The cost of introducing the new badge and a UK wide data sharing system will be £4.60 per badge (excluding VAT). The Welsh Government has decided that the Blue Badge holder will no longer have to pay a fee for a badge. However local authorities will be able to charge up to £10 for an Organisational Blue Badge and for replacement Blue Badges.

There are approximately 230,000 individual Blue Badges and 1,500 organisational Blue Badges in circulation in Wales. The majority of badges are valid for a three year period.

Eligibility

When the Disabled Persons (Badges for Motor Vehicles) (Wales) (Amendment) Regulations 2011 came into force, an unintentional amendment resulted that removed eligibility for children between the age of 2 and 3 who were previously eligible due to blindness (now referred to as severely sight impaired) from the automatic eligibility criteria. This regulation rectifies this error.

Grounds by which a local authority may refuse to issue, or withdraw, a badge.

These regulations are aimed at improving enforcement procedures and tackling misuse and fraud of the Blue Badge Scheme.

The regulations set out additional circumstances when a badge should be returned to the issuing authority. It has been amended to include circumstances in which a badge has suffered any damage that prevents it from being identified correctly or distinguished from a forgery. The regulations have also been amended to allow for replacement badges to be issued to the genuine holder when a badge has been damaged.

The regulations also allow a local authority to seek the return of a badge from a resident in circumstances where another authority issues to the same person a badge and both badges are valid / current at the same time. Regulations have also been added to make it clear that an authority may refuse to issue a badge if the applicant already holds a current badge issued by another issuing authority.

The most significant change to the regulations from an enforcement perspective is in respect of the ability to withdraw a badge for misuse. 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 rarely enforced due to the difficulty of proving misuse of the Blue Badge. Furthermore the definition of a "relevant conviction" is outdated. It includes convictions for parking contraventions. However, under civil parking enforcement, local authorities deal with parking contraventions by issue of Penalty Charges rather than prosecutions. The Welsh Government prefers this approach and would not favour badges being withdrawn for parking contraventions, which may be regarded as minor traffic offences.

Under these regulations a badge can now 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).

Where a successful prosecution is made against an offence 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.

To address any instance where a badge holder might attempt to sell their badge, it will be possible for the local authority to withdraw a badge where the holder has purported to "transfer" the badge to another person.

Due to the above changes to the regulations a local authority will be able to refuse to issue a badge for, amongst other things, previous misuse having led to one successful conviction of an offence.

5. Consultation

A public consultation on these proposals began on 9th August 2011 and ended on 31 October 2011. 90 responses were received from a variety of stakeholders and were taken into account when formulating these Regulations. Details of the consultation exercise together with the Welsh Government's response are included in the Regulatory Impact Assessment below.

PART 2 – REGULATORY IMPACT ASSESSMENT

The *Modern Blue Badge Scheme for Wales: Action Plan for key stakeholders* was published in January 2010 (“the Action Plan”). These regulations will help to deliver the Welsh Government priorities to :-

- a. Improve the administration of the Blue Badge Scheme; and
- b. Introduce new measures to reduce misuse and to prevent fraud and misuse of the scheme.

Options considered for implementation;

Option 1 - Do nothing

Option 2 - Bring in Regulations covering the proposals

The Blue Badge design and fee.

Option 1 – Do Nothing

Currently the Blue Badge design is specified in regulations. The contract with the Stationary Office who supply badges to local authorities comes to an end on the 31 December 2011. If regulations to specify a new design of the Blue Badge are not made then local authorities in Wales will be unable to use the new badge and will be obliged by regulations to continue to use the current design. This would mean that local authorities would not be able to maximise the benefits of the BBIS and it would not be possible to bring forward the measures for improving enforcement. It would also allow for the current badges to remain in circulation beyond the three year transition period and this would hamper our plans to make it more difficult to forge, copy or alter the badge as a way to tackle fraud and misuse of the Scheme.

Costs and benefits

If regulations are not made then local authorities in Wales will have to use the current badge design. The current Blue Badge is printed centrally by the Stationery Office and this contract is due to finish at the end of December 2011. Welsh local authorities are currently supplied with badges through this contract. If the old badge design continues to be required through regulations in Wales then either the individual local authorities will have to establish a secure printing source for the badges or the Welsh Government will need to co-ordinate a central supply service. This will have cost implications and will impose further work on the local authorities or the Welsh Government to secure and manage adequate supplies. The current badge requires local authorities to manually glue the picture of the applicant to the badge, and to write in the applicants details.

If local authorities continued to use the current Blue Badge, Wales could become a weak link for fraud as the current badge is easy to alter, copy or forge. This would undermine the new enforcement arrangements that are planned for the UK as a whole. The continued use of the current Blue Badge

design in Wales may also lead to anomalies and more confusion for badge holders and enforcement authorities especially considering cross border arrangements for use of the Blue Badges, as the old badge design is being phased out in England and Scotland from January 2012.

Currently local authorities can charge a fee of up to £2.00 for a Blue Badge to cover the costs of administrating the scheme faced by local authorities. In practice, the £2 fee does not cover the administration costs of local authorities. Local authorities have indicated that administration costs vary from between £4.00 per badge to £20.00 with an average of around £7.40 per badge (excluding the costs of any medical assessment).

Generally it costs the local authority more than £2.00 to collect and administer the payment, and therefore a number of local authorities do not charge Blue Badge applicants.

Option 2 – Make regulations for a New Badge Design and fee

The proposed regulations will allow a new badge design for Wales which is consistent across the UK. The new badge design introduces improved security features and a more robust product that will better withstand day to day use.

The new features of the badge will deter misuse and help to tackle fraud. Reducing abuse will make it easier for badge holders to park near where they need to go and help to raise the reputation of the Scheme.

Costs and benefits

The new badge design will be compatible with the BBIS which will have a secure database of all Blue Badges issued from 1 January 2012 in England and Scotland and from 1 April 2012 in Wales. The database is an important component for preventing the misuse of the Scheme and will help with subsequent enforcement. Preventing fraud and misuse will ensure legitimate badge holders are more likely to find accessible parking facilities, whilst generally enhancing the reputation of the Scheme. The new badge design will be consistent with the Blue Badges issued by England and Scotland to ensure equity across the UK.

The details of the new Individual and Organisational Badges need to be in a prescribed form in regulations to ensure they meet the same specific details and standards as for England and Scotland. It will mean that Welsh badge holders will be able to access the same services that badge holders in England and Scotland enjoy. This option will deliver the Welsh Government's priorities for modernising the Scheme.

People who meet the eligibility criteria for a Blue Badge often face many extra costs because of the impairments and barriers they face. The Scheme allows parking on road, in accessible bays, some free parking and toll free crossing of some bridges and roads. It allows the badge holder to access services and facilities and can promote independent lifestyles.

The regulations will remove the ability for local authorities to charge a fee for an individual Blue Badge which will reduce the burden on people who meet the eligibility for the Scheme and improve their lives and independence without additional costs. Local authorities will be able to charge a fee of £10.00 for organisational badges and for replacement badges required if the badge has been lost or stolen or damaged before the expiry of the normal three year period.

The charge by Northgate of £4.60 (excluding VAT) for a Blue Badge will impose costs on the local authorities of approximately £440,000 a year. The Welsh Government will fund local authorities for the initial cost of printing the badge. However, the Welsh Government will not fund the costs of replacing lost, stolen and damaged badges or organisational badges.

Measure to reduce misuse and to prevent fraud.

D. Option 1 – Do Nothing

Currently any identified misuse of the Blue Badge Scheme is rarely taken to court due to the difficulty of proving misuse of the Blue Badge. It is even more difficult to achieve the required three convictions before enforcement action can be taken to recover a Blue Badge when it has been continuously misused.

Research undertaken across the UK assessed fraud levels to be between 2% and 4% of badges on issue. This was based on data supplied by those authorities that were able to respond because they collected data and identified misuse. Very few cases of dishonesty or deception are taken to court by the police.

Costs and benefits

Local authorities and organisations such as Disability Wales along with a large number of responses from members of the public provided strong representation on the misuse of the Blue Badge Scheme. Such misuse places genuine badge users at a serious disadvantage as they have been unable to find and use accessible parking facilities. Local authorities do not currently actively prosecute offenders. This may be because the withdrawal of a badge due to misuse by third parties requires 3 convictions and evidence that the badge holder consented to the badge being used. This is difficult to achieve.

If misuse of the Blue Badge scheme is not addressed, then people who are issued with a Blue Badge and comply with the rules governing its use will continue to experience difficulty in finding and using accessible parking facilities. This will reduce their ability to access services and facilities so that the very vulnerable people that the scheme was aimed to help will lose opportunities to lead more independent lives. If the misuse of the scheme is not addressed it will impact on the reputation of the scheme.

D. Option 2 – Make Regulations on Enforcement

Blue Badges are the property of the issuing local authority and these regulations will;

- allow a local authority to ask for a Blue Badge to be returned following misuse of the badge;
- allow a local authority to refuse to issue a Blue Badge; and
- set an unique numbering system for a replacement badge.

Costs and benefits

These regulations will allow improved enforcement of the scheme which should in turn ensure that accessible parking facilities are available for those for whom it was originally intended. Accessible parking enables people who meet the criteria for a Blue Badge to access services and facilities and improves the quality of their lives and can promote independent living.

It will not be compulsory for local authorities to prosecute offenders or withdraw badges. But if the authority has evidence that the badge holder is allowing another party to use the badge for their own purposes and obtain a conviction, it will be easier to withdraw the badge. The intention is that the new powers will give local authorities the ability to undertake enforcement activity more easily and that as a result they will decide to do so. The enforcement regulations will not impose additional burdens on local authorities though there may be some additional costs for the training of local authority parking enforcement officers following changes to the Scheme.

The regulations introduce rules that will allow the withdrawal of a Blue Badge from the badge holder after one offence and will make it easier to take action against persistent offenders. Previously three convictions for three offences were required before enforcement action could take place. The proposals will reduce the work load on enforcement personnel in order to recover a badge and thus save work, however, because of the lower thresholds there may be more enforcement actions taken forward. The impact on workloads could remain consistent as these two factors balance each other out.

Local authorities will also be allowed by regulations to refuse to issue Blue Badges when an applicant has not provided adequate proof of residency or is known to have already been issued with a Blue Badge or had one removed from them previously for misuse of the Scheme. This will allow better enforcement of the Scheme, reducing potential misuse and ensure the Scheme's integrity.

Information to enforce regulations will be provided by BBIS and the reduction in the number of Blue Badges that may be misused should increase the revenue to services providers, from the public and private sector, of toll bridges and parking charges.

Replacement badges will be identified by a unique numbering system and the BBIS database will also be able to identify those badges that are no longer extant. This will enable enforcement officers to identify Blue Badges that are being used following their reported loss or theft. It will enable enforcement action to be taken against offenders.

Removing Blue Badges from circulation that have been cancelled due to loss or theft will prevent abusers accessing concessionary or free parking and also concessionary tolls. This will benefit those service providers, from the public and private sector, who are otherwise losing revenue.

Rigorous enforcement will reduce fraud and misuse. It will remove those Blue Badges in circulation that are not being used as intended and improve access to services and facilities by people who meet the eligibility criteria for the Scheme. Less misuse of the Blue Badge scheme will increase the availability of accessible parking facilities and improve the lives and independence of legitimate badge holders.

Summary

The regulations will enable local authorities to fully use the new BBIS. This system will produce safer, more durable badges that are registered on a UK wide database. The database will enable parking enforcement officers, traffic wardens and police to identify legitimate badges and take action where there has been misuse or fraud within the Blue Badge Scheme.

It is recognised that the people who meet the eligibility criteria often have lower disposable income than the general population it is therefore intended not to charge them a fee for a Blue Badge. There will be a fee for organisational and replacement badges.

Training and guidance for the responsible officers may be required to ensure the proposed changes to the administering and enforcement of the scheme can be put in place. This immediate impact will be reduced over time as such training will be incorporated into induction and training package for new staff.

Using the BBIS should ensure that accessible parking facilities are used for the purpose for which they were put in place. It will mean that only those who are assessed as meeting the eligibility criteria for a Blue Badge will be allowed to use the resource as supplied and enforcement can be taken against those who misuse the scheme. Parking and toll revenues will increase as those who do not meet the eligibility criteria but have been abusing the system will now have to pay parking and toll fees.

Blue Badge holders will benefit from being able use accessible parking resources and therefore access services and facilities to improve their ability to live independent lives. This will enhance the reputation of the Scheme.

Summary of Consultation Responses

The Blue Badge Scheme was created to promote independent mobility and social inclusion. The Blue Badge Action Plan was published in January 2010 and sets out the Welsh Government's priorities to reform and improve the scheme that will help to enhance the quality of life and access for people who experience high levels of disability

A public consultation exercise was conducted between 9 August and 31 October 2011 and covered a number of issues: the Blue Badge fee, assessment procedures and enforcement. Four workshops on assessment of eligibility were held in Builth Wells, Cardiff, Carmarthen and Rhyl and were attended by **66** people.

90 written responses were received as part of the consultation exercise from; local government, health services, representative organisations, special interest groups and members of the public. This represents services providers and service users. The results have been summarised but full analysis can be found in the attached annex A.

Badge Fee

The majority of responses indicated that they were happy to pay a fee for the Blue Badge as it represents good value for money and provides many benefits. Four representative organisations stated that no fee should be charged to disabled people as a Blue Badge is a necessity.

Welsh Government has considered the responses carefully. The Equality Impact Assessment produced for the reforms state that disabled people in Wales are almost twice as likely as non-disabled people to live in low income households, and they face extra costs related to managing their impairments, which could push individuals further into poverty.

The Welsh Government will look for savings available to them to see if it is possible to subsidise the cost of the badge to individual badge holders. At the same time the Welsh Government will seek to identify any burdens placed on local authorities that can be lifted which will provide a contribution towards the administration of the Blue Badge Scheme.

Determining Eligibility

The consultation responses highlighted the need for a consistent approach to assessing eligibility across Wales. Welsh Government recognises that the assessment of eligibility is complex. The consultation responses have identified that the assessment of eligibility requires a systematic approach that will include a combination of desk based assessment and structured interviews with some independent functional assessments. The details of this approach will be developed with advice from the Welsh Government Task and Finish Group.

Enforcement

There was agreement that action should be taken against those responsible for misuse of the Scheme particularly if they did not have a Blue Badge in their own right. The Welsh Government recognises there are some situations where local authorities should be able to cancel and/or seize badges. Proposals will require a change to primary legislation, and we will explore ways to take this forward in due course.

Welsh Government will make regulations to:

- enable local authorities to request the return of a Blue Badge following one serious offence;
- enable local authorities to replace a Blue Badge if it has been tampered with;
- stipulate the format badge numbering to identify it is a replacement; and,
- outline the grounds under which the local authority may refuse to issue a badge.

Competition Assessment

The Regulations will not have a negative effect on competition.

Post implementation review

These changes will be reviewed as part of the wider action being taken to modernise the Blue Badge Scheme in Wales.

APPENDIX A

Changes to the Blue Badge Scheme in Wales

Summary of Consultation Responses

Background

The Blue Badge Scheme was created to promote independent mobility and social inclusion. It allows access to shops and services.

The Blue Badge Action Plan ('the Action Plan') was published in January 2010 and sets out the Welsh Government's priorities to reform and improve the scheme that will help to enhance the quality of life and access for people who experience high levels of disability. Implementation of the Action Plan has already seen eligibility extended to severely injured war veterans, children under the age of three who require bulky medical equipment or access to vehicles for emergency medical treatment and to those who drive but are unable to operate or have difficulty operating equipment to pay for parking.

A further public consultation exercise was conducted between 9 August and 31 October 2011 and covered a number of issues: the Blue Badge fee, assessment procedures and enforcement. Questions were set out in proforma-style documents and provided online. The formats included standard, easy read and a format that could be used with a screen reader to ensure accessibility of the consultation. Braille and hard copies were made available on request.

Four workshops on assessment of eligibility were held in Builth Wells, Cardiff, Carmarthen and Rhyl to explore the consultation questions and issues more fully.

Summary of Responses

90 written responses were received as part of the consultation exercises;

Response form	51
Easy read response	5
Sight impaired response form	3
Other responses	31

The responses were received from groups and individuals;

Local authorities, councils, etc	22
Health services	2
Representative organisations	15
Interest groups	4
Members of the public	47

A list of those who contributed and agreed to share their details can be found at **appendix 1**

The analysis of the responses was undertaken with advice from Welsh Government statistics unit. In most cases the response forms were fully completed and the responses have been collated. Most of the questions were closed questions. Comments were analysed and collated into themes.

Some respondents had difficulty in fully answering question three because of the way that it was set out. We have taken advice from the Welsh Government's Statistics Team and the responses been moderated to ensure that people's views are captured even if they did not fully complete the answer.

Workshops were arranged to discuss question three which is about the options for assessing eligibility for a badge. Invitations to attend were circulated to reach interested parties, the local authorities who administer the Scheme, service users and representative groups. The workshops were attended by **66** people representing local authorities, health services, voluntary/third sector and interested individuals. Mixed discussion groups at the workshops looked at the options for assessing eligibility for a badge as presented in the consultation document and notes were taken and have been included in this analysis as **appendix 2**.

Scope of Analysis

Many responses included personal experiences of using a Blue Badge and highlighted the importance of enforcement to reduce abuse and enable genuine Blue Badge holders to access the Scheme's concessions. There were a number of suggestions on how to improve the Scheme for the user. The new Blue Badge Improvement Services (BBIS) will provide a National database and a durable badge, and will address most of these suggestions. Other comments about the concessions associated with the Blue Badge and suggestions to extend the eligibility criteria do not fall within this consultation though may be subject to consultation in the future. In these cases the comments have not been included in this analysis.

It is apparent through both the responses received and the discussions held at the workshops that there is some misunderstanding of the rules governing the scheme. This can result in misuse of the badge and highlights the importance of clear guidance for Blue Badge holders, their families, friends and carers as well as the general public. Raising awareness will be crucial to ensure responsible use of the badge and accessible parking bays by both badge holders and the general public. This may well alleviate many of the issues of misuse and abuse identified through this consultation exercise.

The analysis has been broken into three areas to reflect the consultation paper: fees, assessing eligibility and enforcement.

Badge Fee

Question 1 What would be a reasonable charge for a Blue Badge?

Proposed Fee	Response Form	Easy Read Form	Other Responses	Total
Zero	5	1		6
£5.50	6	4		10
£7.50	7			7
£10.00	34			34
Fee over £10	2			2
Fee means tested	2		1	3
Low as possible	3			3

The consultation paper proposed three amounts for the Blue Badge fee - £5.50, £7.50 and £10.00.

21 responses from members of the public stated they were happy to pay a fee. It was recognised that the Blue Badge provided significant benefits and that the fee had remained static for some considerable time and therefore represented good value for money. One service user noted that Higher Rate Mobility Component Disability Living Allowance (HRMCDLA) is paid to cover additional transport costs such as the Blue Badge fee.

Four responses from members of the public stated that there should be no fee or a minimal fee. This was because of the unfair burden on disabled people for whom public transport is not accessible. It was stated that the Blue Badge allowed disabled people to be independent.

All responses from local government and health services agreed that a fee of at least £7.50 was acceptable but that this would depend on what the fee was meant to include. Increased fees were noted as being a more realistic reflection of the cost to the local authority of administering the Scheme and some local authorities noted that the fees of £20 in Scotland were more accurate. Concern was expressed about the costs of assessing eligibility. However it was also recognised that increasing the fee is a sensitive issue.

Eleven representative organisations representing disabled people stated that that a fee was acceptable. Six stated that £10 was appropriate even though disabled people tend to be on lower incomes. It was recognised that a Blue Badge provides many benefits.

Four representative organisations stated that no fee should be charged to disabled people as a Blue Badge is a necessity. One response noted that the fee and an increase in the fee had not been adequately explained. These responses referenced the evidence that disabled people have lower incomes than the general population but higher living costs.

They also stated that under equality legislation the Welsh Government has a duty to assess the impact policies have on protected groups to ensure against

discrimination. Disabled people experience great difficulty in accessing shops and services (this includes public transport) in comparison with non-disabled people and the Blue Badge can alleviate some of these problems.

One response noted that the provision of designated spaces under the Blue Badge Scheme is a reasonable adjustment and as the spaces need to be used in conjunction with a Blue Badge then the badge is part of the reasonable adjustment and should be free of charge.

Question 2 Are there any other related points that you would like to make regarding the Blue Badge fee?

A number of other suggestions were made regarding payment of the fee:

- Means testing;
- Welsh Government subsidies;
- Payment by instalments;
- No fee for terminally ill people;
- Increasing the fee in instalments; and,
- Linking the fee to inflation/costs of living index. (If the fee for the badge had been increased year on year to reflect inflation since its introduction in the early 1980's it would now cost approximately £6.00).

There were conflicting views on the impact of the fee on behaviour. It was suggested that on the one hand an increased fee would identify the value of the Blue Badge and promote care of the resource. There were suggestions that replacement badges should cost more to encourage safekeeping by badge holders. On the other hand two responses noted that no matter how large a fee it would not deter abuse.

Several responses noted that there was no consistent policy across Welsh local authorities on car parking fees for Blue Badge holders and this should be addressed.

Comments were made about the application and payment methods being provided in a number of formats to ensure accessibility.

One response suggested a significantly higher annual fee for a Blue Badge so that the Scheme would be self funding.

Welsh Government's Response to Questions 1 and 2

Welsh Government has considered the responses carefully. The Equality Impact Assessment produced for the reforms state that disabled people in Wales are almost twice as likely as non-disabled people to live in low income households, and they face extra costs related to managing their impairments, which could push individuals further into poverty. In the Programme for Government we have made a commitment to reduce poverty amongst some of our poorest people and communities. This commitment needs to be

balanced against the financial constraints that the Welsh Government and local authorities find themselves under at the moment.

The Welsh Government will look for savings available to them to see if it is possible to subsidise the cost of the badge to individual badge holders. At the same time the Welsh Government will seek to identify any burdens placed on local authorities that can be lifted which will provide a contribution towards the administration of the Blue Badge Scheme.

Determining Eligibility

Question 3 Could you please score the six options outlined in the document for assessing eligibility against the objectives that the assessment process need to meet. (Higher scores indicate that the objective is more likely to be met. Forms completed with Yes/No answers have been translated to numeric responses to aid analysis; Yes = 5, No = 1).

Objectives →	Objective 1 - Can eligible applicants be accurately identified?	Objective 2 - Is decision making consistent and fair?	Objective 3 - Will it provide an efficient service and minimise duplication?	Objective 4 - Is it feasible?	Objective 5 - Is it deliverable?	Objective 6 - Is it acceptable to service providers?	Objective 7 - Is it acceptable to customers?	Objective 8 - Does it provide value for money?
Options ↓								
Option 1 - Do Nothing	53	46	49	68	91	56	80	55
Option 2 - Do the Minimum	66	59	62	84	92	71	90	64
Option 3 - Self Assessment	57	55	70	73	81	72	111	69
Option 4 - Independent Clinical / Functional Assessment	152	139	115	111	110	113	114	87
Option 5 - Desk Based Assessment with Support	121	121	122	116	117	116	104	100
Option 6 - Structured Interview Assessment	140	136	128	120	115	125	109	104

Each of the options were scored against the eight objectives and the total scores for each option have established an order of preference.

POSITION	SCORE	OPTION
1	977	Structured Interview Assessment
2	933	Independent Clinical / Functional Assessment
3	910	Desk Based Assessment with Support
4	588	Do the Minimum

4	588	Self Assessment
6	498	Do Nothing

Workshops to discuss the options were held and the notes from these can be found in **appendix 2**. The consultation responses recognise that there is a need for a consistent approach to assessing eligibility across Wales and consequently Option 1 - do nothing and Option 2 - do the minimum are not considered to be acceptable. Option 3 – self assessment although considered the most suitable in terms of the social model of disability was also thought to be open to fraudulent applications and therefore not acceptable.

Option 4 – having independent or functional assessments was measured as the most objective method and likely to accurately identify applicants who met the eligibility criteria. However, some responses identified that current welfare reform has introduced independent assessments and there have been a number of issues with the validity of these outcomes. Queries were also raised about to whom the costs of the assessment would fall and the time taken to arrange and undertake the assessment. Independent assessments were identified as costly, may not deliver value for money and would take longer to deliver.

Option 5 – a desk based approach was rated nearly as highly as option 4 and it was noted it would be more consistent. It was identified as being appropriate for straight forward applications for a Blue Badge but would need to be underpinned by strict guidance and a training programme.

Option 6 – structured interview was rated in a similar way to option 5 and would also provide consistency in decision making. It was identified as providing a more holistic assessment of the applicant but would require carefully scripted questionnaire to probe into the application and would need strict guidance and a training programme.

Options 4, 5 and 6 were all considered to have a place in assessing eligibility and many responses suggested that these could be combined to produce a system of assessment to minimise intrusive/repeat assessment procedures, reduce costs and make best use of local authority resources. Some respondents raised concerns about the ability of local authorities to deliver these options.

Question 4 Are there any other comments you wish to make regarding the assessment process?

A number of other suggestions were made regarding assessing eligibility:

- Conditions that are identified as degenerative or lifelong should be subject to a fast track renewal system;
- At renewal check for improvements or changes in circumstances should be made;
- Different levels of impairments were recognised and therefore different levels of eligibility should be identified;

- Eligibility criteria should be linked to higher rate attendance allowance where the applicant is unable to apply for HRMCDLA due to age;
- Assessments should be based on functional ability;
- Assessments should be based on 'worst day' scenarios for those fluctuating conditions;
- Assessments should be holistic to understand the needs of the applicant physical, sensory and cognitive;
- Flexible assessments in different formats, with advocates and home visits should be built into the system;
- An appeal system be put in place as part of the process;
- Clear guidance and training to support local authority staff to deliver assessments;
- Training in equality be provided for staff delivering the assessment process;
- Information from other assessment processes should be shared to reduce stress for the applicant; and,
- A review of the system developed by this consultation be put in place to ensure it is delivering the service as required.

The response from the Information Commissioners Office highlighted a number of issues with data sharing that will need to be taken into account and they have offered ongoing advice and support.

Welsh Government's Response to Questions 3 and 4

Welsh Government recognises that the assessment of eligibility is complex. The consultation responses have identified that the assessment of eligibility requires a systematic approach that will include a combination of desk based assessment and structured interviews with some independent functional assessments. The details of this approach will be developed with advice from the Welsh Government Task and Finish Group. Workshops will also be delivered for local authority staff and service users to ensure the suitability of proposals.

Before this system is put into operation a full package of guidance and training will be developed and delivered to the local authorities. The implementation of the system will be reviewed to ensure that delivery is meeting the needs of all parties.

The Blue Badge Scheme does not currently have an appeals system though applicants who are found not to meet the eligibility criteria can always reapply or have the decision reviewed on the production of supporting evidence.

As part of the review of the implementation of the new system Welsh Government will give consideration to appropriate appeals mechanisms.

Enforcement

Question 5 Are there any other situations where the local authority should be able to cancel a Badge?

It was suggested that a Blue Badge be cancelled where the owner had:

- Lost their badge;
- Sold their badge;
- Falsified their application;
- HRMCDLA removed;
- Convictions for benefits fraud; and,
- Continual misuse/abuse of parking.

There was general agreement that abuse of the Scheme should be addressed and that action should be taken against those responsible particularly if they did not have a Blue Badge in their own right. The mechanics of cancelling a Blue Badge were identified as more difficult as the owner of the Blue Badge may be unaware of the abuse or be a vulnerable individual.

Full investigation of circumstances should be undertaken before a badge is cancelled and staff undertaking such investigations should be trained in equality awareness.

Other suggestions include:

- For a first incident of abuse a warning should be issued and the badge only cancelled after a second incident;
- An appeal system will need to be put in place;
- If a Blue Badge has been stolen the owner of the badge needs to register the theft with the police and obtain a crime number; and,
- Enforcement action by the local authority should be supported by full guidance.

Question 6 Should it be an offence to not return a blue badge when required?

Yes 43

No 6

There was wide support to make it an offence to withhold the return of a Blue Badge when required to do so as it is recognised that problems can occur when an expired badge or a deceased persons badge remains in circulation. A range of suggestions were made about how this problem could be addressed and it was noted that it required a sensitive approach. The new 'Tell us Once' service was identified as being particularly useful in cases of the person being deceased.

Although there was significant support for this proposal it was noted that full investigation of the circumstances of the offence was thought necessary before action is taken. Further that those working in this area require equality training to ensure the needs of individuals are taken into account including all physical, sensory or cognitive impairments.

Question 7 In what circumstances should authorised council officers have the right and powers to seize (confiscate) Badges?

Circumstance	Yes	No
An original Badge is being used which has been reported lost or stolen and for which a replacement has been issued	50	
Badge holder has died	49	2
The Badge is more than 1 month out of date	38	10
The Badge had been tampered with i.e. date changed	49	
The Badge details cannot be read i.e. text has faded	30	19
A Badge that any UK council has requested to be returned to them for whatever reason	43	5
Use of an invalid Badge i.e. copy	51	
Person other than the Badge holder using the Badge for obtaining a concession provided to genuine Badge holders	45	5
A person offering for sale a Blue Badge	48	2

The respondents generally agreed that the local authority should have the power to confiscate a Blue Badge in cases of abuse. However it was noted that if the badge is faded the relevant local authority should make arrangements for a replacement badge. Enforcement was generally welcome as it was noted that abuse of the Scheme is to the detriment of Blue Badge holders.

The respondents also noted that incidents should be carefully investigated and a 'warning' system put in place before full confiscation. Third party abuse by friends, family or carers that leads to confiscation could have detrimental effects on a vulnerable person who meets the Blue Badge criteria and is unaware of the abuse. It is the person misusing the badge who should be penalised not the badge holder.

Strict guidance will be required to ensure any measures to confiscate a badge are handled appropriately and an appeal process put in place for the badge holder to present their case for retaining the badge.

One respondent noted the need to promote the Scheme and highlight the impact of abuse on disabled people and how it is 'socially/morally unacceptable'.

Question 8 What would be the most effective ways of removing cancelled Badges from circulation?

Suggestions included:

- Traffic wardens, community officers, local authority officers, customer service staff, car park attendants, police to be given powers of inspection and seizure;
- Fixed penalties and court summons, with a fine of £1000;
- National database and alert mechanism for badges that should be seized;
- Technical equipment to identify expired, false, lost and stolen Blue Badges;
- Request return and provide pre-paid envelopes, if badge continues to be used severe penalties should be imposed;
- Home visits to collect badges;
- Renewal badges only provided on return of expired badge;
- Tell us Once service or similar to retrieve badges where person deceased;
- Amnesty to recover old badges; and,
- Publicity campaign to raise awareness of abuse and the rules governing the Scheme.

Welsh Government’s Response to Questions 5, 6, 7 and 8

The Welsh Government recognises there are some situations where local authorities should be able to cancel and/or seize badges. Proposals will require a change to primary legislation, and we will explore ways to take this forward in due course.

In the interim Welsh Government will make local authorities aware of current legislation which provide powers to take enforcement action. The new BBIS will also put in place some safeguards against the fraudulent use of the Scheme.

Question 9 Do you agree that we should reduce the current “three relevant convictions” requirement in the legislation for?

a) **Blue badge holder**

Yes	28	No	12
Yes	35	No	6

b) **Third party abuse of a Badge**

There was general support to change the three conviction rule particularly for third party abuse to one conviction only. The consultation asked for the advantages and disadvantages of removing the current three relevant convictions requirement from the legislation.

Advantages

- Need to prohibit further system abuse and allow genuine badge holders to use their badge;
- Abuse should result in immediate removal of badge from use – i.e. one strike and you are out;
- Punishing serious and deliberate abuse would raise the profile of the correct use of the Scheme, public accountability will help deter abuse;
- Stricter rules could reduce misuse of the badge and raise value of badge to the holder themselves so that they are taken better care of;
- Allowing misuse to continue undermines the integrity of the Scheme
- Very few incidences of abuse get to the conviction stage and three convictions are unobtainable, if reduced to one conviction it would be a greater deterrent and the re-issue of the badge would be at the discretion of the local authority; and,
- Identifying misuse due to a vulnerable person being put under pressure could identify cases where social services can help protect a victim.

Disadvantages

- Sanctions should be taken to maintain the integrity of the Scheme but the Blue Badge holder will still require and be entitled to a badge;
- Some badge holders may be unaware of third party abuse;
- Some vulnerable Blue Badge holders may have been coerced by family, friends or carers into misusing badge and are therefore not responsible for the abuse of the system;
- Three occasions of misuse may have been identified but there may have been continual misuse where person has not been caught;
- It may be difficult for a person to modify behaviour following one warning, some people will need three warnings before they are able to adjust;
- If a person has three convictions they have therefore had three punishments, removing the badge is an extra punishment and unnecessary;
- There needs to be clarity and consistency across Wales;
- Removal of badges because of abuse could increase the black market value of Blue Badges and encourage theft;
- There will be an increase in local authority work load; and,
- The three conviction rule may be better for disabled people misusing a badge whilst one conviction for third party abuse is reasonable.

Question 10 A Blue Badge has been taken away or the local authority refuses to issue any more badges to that person for a period of time to be decided by the local authority based on each individual case. For how long should the refusal to issue a Blue Badge be in place?

Not issue a badge for a set period	Yes	38	No	4
If Yes, not issued for: 6 months	Yes	15	No	

Welsh Government will make regulations to enable local authorities to request the return of a Blue Badge following one serious offence:

- An offence by a third party with the knowledge of the registered Blue Badge holder, for example misuse of the badge, copying, forging, altering badges or otherwise using the badge in a fraudulent way; and,
- An offence by the badge holder, for example allowing misuse by a third party, altering or tampering with badges, obtaining a badge by false representation, selling or attempting to sell a badge or if the holder of the badge has already been issued a badge by another local authority.

Welsh Government will make regulations to enable local authorities to replace a Blue Badge if it has been tampered with, regulations will also stipulate the format of the badge to identify it is a replacement.

Welsh Government will make regulations setting out the grounds under which the local authority may refuse to issue a badge, including:

- The applicant does not provide proof of residency within the local authority;
- The applicant holds a badge issued by another local authority; and,
- The applicant has been convicted of an offence related to the Blue Badge Scheme.

Welsh Government will provide guidance to local authorities to enable implementation of the regulations and understands that guidance on the rules and responsibilities of the Blue Badge Scheme must also be available for Blue Badge holders and the general public.

List of Contributors

Local Authorities, councils, etc

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Ceredigion Social Services
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Councillor Simon Lloyd RCT
Customer Focus Wales

Flintshire County Council
Gwynedd County Council
Monmouth County Council
Neath Port Talbot County Borough
Council
Powys County Council
Rhondda Cynon Taff County
Borough Council
Torfaen County Borough Council
WLGA

Health Services

Chartered Society of Physiotherapists
College of Occupational Therapists

Representative Organisations

Arfon Access Group
Carmarthen Access Group
Children in Wales
Deafblind Cymru
Disability Wales
Disabled Motoring UK
Diverse Cymru

Guide Dogs for Blind
Leonard Cheshire Homes
National Autistic Society Cymru
NPT Council for Voluntary Service
One Voice Wales
Parents Federation

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Blue Badge Consultation Workshop Notes

The Blue Badge Consultation Document: Changes to the Blue Badge Scheme was issued August 9, 2011 with a closing date of October 31. The consultation covered a number of areas; fees, assessment and enforcement. A series of consultation workshops were held to discuss the issues around assessing eligibility for a Blue Badge. These workshops were held during October in Builth Wells, Cardiff, Carmarthen and Rhyl. They were attended by 66 people representing local authorities, health services, voluntary/third sector and interested individuals.

The workshops provided the background to the programme currently underway to modernise the Blue Badge Scheme, providing an update on progress and outlining the proposals that have been presented in the consultation document for assessing eligibility for a badge. Questions were welcome to delve into the detail and concerns of participants.

Discussion groups were set up with cross representation to discuss the options for assessment and the feed back is provided below.

OPTION 1 – Do Nothing

- This option was considered the easy option but currently decision making is inconsistent and open to fraud consequently it was rejected by all the discussion groups in all the workshops;
- Inconsistencies occur within LA and between authorities including cross border issues with England;
- Many local authorities seem to rely on local General Practitioners to validate applications, leading to high costs and long delays. The system lacks fairness and does not work as a GP cannot provide accurate functional/medical information and are compromised by their relationship with patients. It is thought that this leads to applicants being issued with a Blue Badge despite not meeting the criteria;
- There is some evidence of successful practice in authorities but this is not universal and successes are only piecemeal;
- The option may not have significant costs but does not deliver value for money and lowers the reputation of the Scheme; and,
- It does not meet the objectives or benefit the BB holder.

OPTION 2 – Do the Minimum

- Uniform guidance across Wales would be welcome but it was noted that no matter how detailed or strict guidance is it is still open to interpretation that will result in inconsistencies, be discriminatory and not fair;
- It would require an audit process as there is no bench marking. The interpretation of guidance will differ between the customer service and customer;
- It would require good guidance & application form, Filling in forms can

- be difficult and they need to be accessible for applicants;
- Users have experienced difficulty in sharing of information not just between service providers ie LHB & LA, but also within the LA. Could the applicant nominate a health specialist to support the application and the LA have a list of approved specialists. Sharing information may require guidance from Welsh Government;
- Relying on reports from specialists will require applicant to have seen them within the past year (not one of the junior doctors). General agreement that it is very difficult to understand complicated conditions & how medication is used (problems of side effects);
- Users queried the understanding of LA staff about medical terms and complexities their ability to make decisions based on a limited understanding regardless of guidance provided. LA staff must provide face to face service in order to make decision or have appropriate assessment centre;
- This option will still result in GP input with the same problems as noted in the first option;
- Would bring some consistency to decision making if the same approach is maintained across Wales; and,
- Unanimously rejected as not meeting any of the objectives, it was not felt that guidance alone could sufficiently address failings.

OPTION 3 – Self Assessment

- The groups all considered that this is open to abuse and fraud the option relies on honesty and may result in a huge increase in Blue Badges. The honesty of applicants was questioned, people apply because they believe they have entitlement but this could be part of an initial sift process. It would be difficult to challenge applications because of Human Rights, honest people could lose out. It is question of needs versus wants;
- It would be impossible to self diagnose without supporting information and some people would not provide proper information due to pride and/or dignity;
- To self define will require high level of understanding of ones own condition and the person will have to be articulate. There is a need detailed application form to dig for details of how applicant meets the criteria; it needs to be probing to establish eligibility. This could benefit those who are articulate and best able to use this system;
- It is the cheapest option for delivery but if the number of Blue Badges in circulation increases significantly then revenue from car parks will drop. This option rejected because of potential for abuse and accessibility for those who meet criteria;
- There is a greater negative publicity in removing a Badge than in not issuing it originally;
- Self assessment could be a starting point - a first sift – in a stepped process whereby assessment could be as simple as possible where evidence is substantial and further enquiry only necessary if more evidence needed; and,

- Unanimous rejection as this would option not be fair or consistent and the scheme would be open to abuse.

OPTION 4 – Clinical Assessment

- Assessments should be undertaken by those with greatest understanding of how a condition impacts on daily living for the individual, a functional assessment. OT very highly rated, also rehabilitation officers but there are issues of capacity, costs and time as well as the travel to assessment centres;
- What form would assessment take and would this have consequences for time taken to process application? Would assessment be with LA or LHB;
- Should the applicant nominate the specialist and should LA have a list of approved specialists. Should both specialist and GP countersign the BB application form;
- A fixed fee was considered fair and equitable but questions about who should pay;
- Some applicants will require support and assessment from their specialist but they can have conflicting views – it is not just about walking, and specialists can be inconsistent too;
- Could the assessment be tied in with applying for benefits (implications – 065/060, type of benefit, education or knowledge of benefits system & eligibility), however, the assessment system for ESA by ATOS based on independent medical assessments has been discredited;
- Ideally applicants would not question/challenge medical professional and therefore independent assessments could increase consistency. A national standard will raise quality, provide more authenticity and raise the profile and value of Blue Badges, fraudsters will be deterred from applying;
- Suggested that competitive tendering process could result in National scheme to increase fairness and delivery could be through third sector;
- Life long conditions should not be subject to reassessment and their files marked as such; and,
- Unanimous that clinical assessment will be unfeasibly costly for local authorities and unnecessarily oppressive for applicants if used for all applications.

OPTION 5 – Desk Based Assessment with Support

- This option will require very strict guidance for both applicants and administrators and some people at workshops would prefer delivery by social or medical worker rather than the customer service model of delivery;
- The option will require ongoing training and may require audit process;
- Supporting information should be provided by the applicant but this

can depend on the rapport or relationship they have with their specialist. Should applicant be provided with proforma for when they visit specialist or other health or service provider;

- How can supporting evidence be validated to rule out fraudulent applications;
- Who pays for health advice or supporting evidence;
- There will need to be standard form with guidance on who/how it is completed;
- The system is paper bound and people can be afraid of form filling, this could have implications for time/delays. The system will need to ensure accuracy of form filling and to help those without literacy skills;
- Need to provide services in alternative formats, face to face, telephone, easy read, etc.;
- An holistic view of the applicant considering full range of evidence including diagnosis, medication, benefits (even those that do not passport services), other services provided by LA;
- There may be delay waiting for medical evidence it would be better to provide this with the completed application form;
- If a condition is rare and therefore diagnosis takes time this will impact on eligibility, will require guidance to check correct diagnosis, more information for a rounded decision. Grey areas are the issue;
- This option came closer to meeting most of the objectives and being best value for money;
- There was concern that a mostly desk-based process might lack thoroughness which could lead to:
 - Blue Badges going to those not fully justified on closer scrutiny; and,
 - Blue Badges being refused to those in genuine need but not recognised by the assessor due to lack of information or interpretation of the information. [This was one of many areas where a fundamental grasp of the Social Model was felt to be a core job specification for assessors].
- Where applicants are turned down there needs to be a clear explanation of the decision making process; and,
- An appeal process will be required.

OPTION 6 – Structured Interview Assessment (conversation with purpose)

- Process longer, face to face is preferable but does LA have the facility, where does it sit in the LA. Are offices accessible to allow face to face interviews;
- On line and telephone applications may still be necessary or home visits. LA will need to validate application;
- Can a help line be established on national basis to help form completion or collaborative working with other LA s providing service;
- What forms of supporting evidence; prescriptions, appointments with specialists, what else? How is medication interpreted to take into account novel uses, or the non use of certain medications because of

side-effects;

- Can certain services be taken as passport;
- For those grey areas (we need to define the grey areas) decision making needs to be referred to OT or other specialist. GP should be last resort (but can be a resource);
- This may be an opportunity to develop collaborative working by LA with LHB to deliver assessments for those grey areas. Use duty OT or team manager for advice, maybe share specialists across LA s;
- Also use other services – the frailty project in Monmouth, Integration officer in Carmarthen, Carmarthen Carers association provides training to social services in Carmarthen – get the teams to work together, Tell us Once service/ data sharing;
- Query – how do you rule out false applicants who play up at the assessment to exaggerate their symptoms? NPT base this on experience & non verbal clues. Face to face interviews can be valuable, in rural areas may need to visit people at home (possible use agencies in conjunction with LA);
- Use panel of experts – can we tap into lobby organisations eg Alzheimer's, carers, Arthritis, etc. Have named people for advice if organisation grant funded by LA or WG can write it into contract of service;
- Need intelligent form that provides basic details & identifies where applicants falls within eligibility criteria. Carefully formulated questions will draw out detailed information required. Will require training programme for service providers; and,
- Participants did not feel that option this was realistic in terms of the availability and cost of staff time involved. Discussion groups produced a series of suggestions for a way forward and decision trees and flow chart see below, providing a tiered system of delivery.

It was noted that an all Wales system and criteria is preferred. There was consensus that none of the 6 options met all of the objectives but that a system could be developed using aspects of each option to deliver a tiered approach to assessing eligibility. It was concluded that a systematic approach to identify applicants who meet the eligibility criteria with supporting automatic evidence, discretionary evidence or through structured interview can be put in place with appropriate guidance. The staged approach would consider and make decisions on applications as follows:

- 1 – Automatic with appropriate passport benefit;
 - 2 – Discretionary applications with appropriate supporting evidence;
 - 3 – Discretionary applications that can be supported with phone conversations to establish extra information to enable a decision to be made;
 - 4 – Discretionary applications that require face to face contact or interviews;
- and,
- 5 – Functional assessments of discretionary applications by clinical professionals as a last resort.

At any point in the process if an application is rejected then a full explanation of how the decision was reached should be provided. If the decision is challenged a process to allow for that decision to be re-considered should be made available on the basis that further information or evidence is provided by the applicant.

If a challenge results in a decision being over turned this should be monitored and fed back as a training requirement for case officers.

Renewal systems should be reviewed to take into account life long conditions. Also if the badge holder is sight impaired that the renewal process should be able to identify this fact and a phone is required to remind the person of the renewal date.

Discussion also raised prospect of a system being piloted or centres of excellence being developed. This would require collaboration but could alleviate some problems, e.g. provide camera equipment and scanners as some wheel chairs are too bulky for photo booths and scanners will enable sharing of photographs. This initiative could be wider than the Blue Badge Scheme.

It was recognised that the scheme is subject to abuse and the rules and responsibilities for the badge holder need to be clarified in a simple, short, illustrated document.



Y Pwyllgor Menter a Busnes Enterprise and Business Committee

Jane Hutt AM
Minister for Finance and Leader of the House
Welsh Government

7 February 2012

Dear Minister

EU Procurement Task and Finish Group

On Thursday 2nd February the Enterprise and Business Committee agreed to write to raise concerns about two aspects of the European Commission draft proposal for a directive on public procurement¹, replacing Directive 2004/18.

The Committee's legal adviser drew the attention of the Committee to the final paragraph of Article 24.1 which would permit only partial transposition of the Directive in relation to procurement procedures: *"Member States may decide not to transpose into national law the competitive procedure with negotiation, the competitive dialogue and the innovation partnership procedure."*

The Committee's Task and Finish Group is still in the process of holding informal discussions with Welsh stakeholders on the possible implications of the draft proposals for Welsh contracting authorities and suppliers. However, the group is clearly concerned that should the UK Government decide not to transpose all possible procurement procedures into national law, this could reduce the scope both for

¹ Document reference COMM(2011) 895 final

innovation and for the securing of social and environmental benefits by negotiation.

/2...

- 2 -

The group has not had sufficient time to discuss this issue fully with the Cabinet Office, but it would seem that the matter could be resolved either by removing the discretion of the Member State from the Directive, by persuading the UK Government to fully transpose all the procedures provided for in the Directive, or by obtaining a designation to enable Wales to transpose separately (as Scotland already does).

It would be helpful for the Committee to ascertain the views of the Welsh Government on this issue.

Secondly, as you are already aware, the Task and Finish Group has concerns regarding the implications of Article 84 of the draft directive, to establish a single 'national oversight body' for each Member State. The UK Government's explanatory memorandum notes that this may infringe the principles of subsidiarity and/or proportionality, and that the new proposals seem to be "*unjustifiably intrusive in requiring judicial and non-judicial functions to be combined in a particular way within a single body...*" The Task and Finish Group is concerned that as currently drafted, Article 84 does not recognise devolution, is too prescriptive, and it is unclear whether such a body would have positive benefits, or would simply add an extra layer of (possibly costly) bureaucracy to the procurement regime.

It is the role of the Assembly's Constitutional and Legal Affairs Committee to consider the legal implications of this particular proposal, and to flag up any concerns arising from a subsidiarity check with the relevant European Committees of the UK Parliament. However, as the proposals are currently already under scrutiny in those parliamentary Committees, I am copying this letter to the respective Chairs, with a request that, if at all possible, they explore these matters with the UK Government in the course of that scrutiny.

Yours sincerely

Nick Ramsay AM

Chair, Enterprise and Business Committee

Julie James AM

Chair, Task and Finish Group on EU Procurement policy, Enterprise and Business Committee

Copied to:

William Cash MP

Chairman, European Scrutiny Committee
House of Commons

Baroness O’Cathain,

Chair, EU Sub-Committee B – Internal Market, Energy and Transport
House of Lords

David Melding AM,

Chair, Constitutional and Legal Affairs Committee
National Assembly for Wales

Edwina Hart MBE OStJ AM

Minister for Business, Enterprise, Technology and Science
National Assembly for Wales

Agenda Item 5

Cynulliad
Cenedlaethol
Cymru
National
Assembly for
Wales



Constitutional and Legislative Affairs Committee

Report: CLA(4)-03-12 : 6 February 2012

The Committee reports to the Assembly as follows:

Instruments that raise no reporting issues under Standing Order 21.2 or 21.3

Negative Resolution Instruments

CLA80 – The General Teaching Council for Wales (Functions) (Amendment) Regulations 2012

Procedure: Negative.

Date made: 20 January 2012

Date laid: 26 January 2012

Coming into force date: in accordance with regulation 1(2)

CLA81 – The General Teaching Council for Wales (Additional Functions) (Amendment) Order 2012

Procedure: Negative.

Date made: 20 January 2012

Date laid: 26 January 2012

Coming into force date: in accordance with regulation 1(2)

CLA82 – The General Teaching Council for Wales (Amendment) Order 2012

Procedure: Negative.

Date made: 20 January 2012

Date laid: 26 January 2012

Coming into force date: in accordance with regulation 1(2)

CLA83 – The General Teaching Council for Wales (Constitution) (Amendment) Regulations 2012

Procedure: Negative.

Date made: 20 January 2012

Date laid: 26 January 2012

Coming into force date: in accordance with regulation 1(2)

CLA84 - The General Teaching Council for Wales (Disciplinary Functions) (Amendment) Regulations 2012

Procedure: Negative.

Date made: 20 January 2012

Date laid: 26 January 2012

Coming into force date: in accordance with regulation 1(2)

Affirmative Resolution Instruments

None

Instruments that raise reporting issues under Standing Order 21.2 or 21.3

Negative Resolution Instruments

None

Affirmative Resolution Instruments

None

Other Business

Local Government Byelaws Bill

The Committee took oral evidence from the Minister for Local Government and Communities Carl Sargeant AM in respect of the Local Government Byelaws Bill.

The Minister agreed to provide further written information about:

- the procedures that would apply in practice to powers under Section 7 that are exercisable concurrently with the Secretary of State;
- the resolution of opposing views, between two Community Councils and between Community Councils and Unitary Authorities, over the need for the creation of new byelaws; and
- the range within which a fixed penalty must fall and whether there should be greater procedural consistency between Orders changing the fixed penalty (affirmative procedure) and Regulations specifying the range of penalties (negative procedure).

Committee Correspondence

Supplementary Legislative Consent Memorandum (LCM) relating to the Welfare Reform Bill

The Committee discussed the report of the Children and Young People Committee on the Supplementary Legislative Consent Memorandum (LCM) relating to the Welfare Reform Bill. The Committee decided to reflect the issues highlighted by this report in its own report on the Inquiry into the Granting of Powers to Welsh Ministers in UK Laws.

Welsh Government Guidelines on Choice of Affirmative or Negative Procedure in Subordinate Legislation

The Committee discussed the Welsh Government Guidelines on Choice of Affirmative or Negative Procedure in Subordinate Legislation sent by the Counsel General to the Chair in a letter dated 24 January 2012. The Committee decided to write to the Counsel General to inform him about the issues highlighted by the discussion.

Resolution to Meet in Private

In accordance with Standing Order 17.42(vi) the Committee resolved to exclude the public from the remainder of the meeting to discuss the evidence on the Local Government Byelaws Bill.

David Melding AM

Chair, Constitutional and Legislative Affairs Committee

6 February 2012