



RURAL ECONOMY AND CONNECTIVITY COMMITTEE

AGENDA

15th Meeting, 2016 (Session 5)

Wednesday 21 December 2016

The Committee will meet at 10.00 am in the Mary Fairfax Somerville Room (CR2).

1. **Decision on taking business in private:** The Committee will decide whether to take item 4 in private and whether consideration of its report on the Draft Budget 2017-18 should be taken in private at a future meeting.
2. **Draft Budget Scrutiny 2017-18:** The Committee will take evidence on the Scottish Government's Draft Budget 2017-18 from—

Fergus Ewing, Cabinet Secretary for the Rural Economy and Connectivity, Mike Baxter, Director Finance, Transport Scotland, Colin Cook, Director - Digital, Jo O'Hara, Head of Forestry Commission Scotland, and Simon Hodge, Chief Executive, Forest Enterprise Scotland, Scottish Government.

3. **Subordinate legislation:** The Committee will consider the following negative instruments—

The Road Traffic (Permitted Parking Area and Special Parking Area) (East Lothian Council) Designation Order 2016 (SSI 2016/407);

The Parking Attendants (Wearing of Uniforms) (East Lothian Council Parking Area) Regulations 2016 (SSI 2016/408);

The Road Traffic (Parking Adjudicators) (East Lothian Council) Regulations 2016 (SSI 2016/409)

4. **Draft Budget Scrutiny 2017-18:** The Committee will reflect on the evidence it has heard on the Scottish Government's Draft Budget 2017-18.

REC/S5/16/15/A

Steve Farrell
Clerk to the Rural Economy and Connectivity Committee
Room T3.40
The Scottish Parliament
Edinburgh
Tel: 0131 348 5211
Email: steve.farrell@parliament.scot

The papers for this meeting are as follows—

Agenda Item 2

Scrutiny of the draft Budget 2017-18

REC/S5/16/15/1

Agenda Item 3

SSI Cover Note

REC/S5/16/15/2

Rural Economy and Connectivity Committee
15th Meeting, 2016 (Session 5), Wednesday, 23 December 2016
Scrutiny of the draft Budget 2017-18

Background

1. The Rural Economy and Connectivity Committee has responsibility for scrutinising the Scottish Government's draft budget 2017-18 on issues under its remit. The Scottish Government [published the draft Budget](#) on 15 December. This is later than in previous years to take account of the UK Government Autumn Statement. The reporting deadline of mid-January for the Committee to report to the Finance Committee remains unchanged.

Budget scrutiny

2. In order to accommodate the tight timeframe the Committee agreed to take pre-introduction budget evidence from stakeholders. This allowed the Committee to gain an understanding of important budgetary issues in advance of the budget being published. This year's scrutiny focused on two areas within the Committee's remit.
 - a. forestry planting targets and infrastructure (rural economy); and
 - b. broadband service provision (digital connectivity);
3. The Committee heard evidence on forestry on 23 November and digital connectivity on 30 November. At its meeting on 21 December the Committee will take evidence from Fergus Ewing, Cabinet Secretary for Rural Economy. At this session Committee Members will also be able to explore any area of the draft Budget which relates to the Committee's remit.

Topic background - broadband connectivity

4. The Scottish Government has committed to spend £90m to deliver superfast broadband access to at least 95% of premises in Scotland by the end of 2017, and 100% by 2021. The Scottish Government also intends to publish a refreshed Digital Strategy in 2017 to set out how it will reach these goals. The Committee has expressed an interest in:
 - The speed and access standards required to meet the needs of consumers and businesses and the funding necessary to meet these standards.
 - The impact of restricted access to high speed internet on the rural economy. In particular tourism and local small businesses.
 - Future funding for Community Broadband Scotland and funding related performance of community broadband projects.
 - The level of investment required to meet the Scottish Government's commitment to provide access to next generation networks to 100% of premises by 2021

Topic background - Forestry

5. The Forestry Commission budget has fallen in both cash and real terms in recent years. However, a report on the Economic Contribution of Forestry in Scotland found that the sector contributed nearly £1 billion to the economy in 2012/13. Employment levels have also increased with over 25,000 FTE now working in the sector. Forestry also makes a significant contribution to meeting Climate Change targets. The Committee has expressed an interest in:

- Sales and acquisition of Forestry Commission Scotland assets
- Planting targets and whether there is funding and incentives available to meet them.
- Challenges from pests and diseases in the face of climate change, and what funds are being directed towards addressing these challenges
- The potential impact of Brexit in relation to SRDP funds from the EU.

Heather Lyall
Senior Assistant Clerk
Rural Economy and Connectivity Committee
December 2016

Rural Economy and Connectivity Committee

15th Meeting, 2016 (Session 5), Wednesday, 21 December 2016

Subordinate legislation

Title of Instruments

The Road Traffic (Permitted Parking Area and Special Parking Area) (East Lothian Council) Designation Order 2016 (SSI 2016/407)

The Parking Attendants (Wearing of Uniforms) (East Lothian Council Parking Area) Regulations 2016 (SSI 2016/408)

The Road Traffic (Parking Adjudicators) (East Lothian Council) Regulations 2016 (SSI 2016/409)

Type of Instruments

Negative

Laid Date

SSI 2016/407	8 December 2016
SSI 2016/408	8 December 2016
SSI 2016/409	8 December 2016

Minister to attend the meeting

No

Purpose

1. The purpose of this package of three Scottish Statutory Instruments (SSI's) together is to introduce a decriminalised parking regime within the East Lothian Council area.

2. To date, 15 Scottish local authorities have introduced decriminalised parking regimes. This enables them to administer their own parking penalty schemes, and to retain the penalties collected to finance parking enforcement procedures and other traffic management measures.

3. At its meeting on 28 September 2016, during consideration of a similar package of parking regulations applying to the Highland Council area, the Committee requested further information on Local Authorities' income from parking charges and how this is spent. **The response from Transport Scotland was received on 28 November 2016 and can be found at Annex A.**

The Road Traffic (Permitted Parking Area and Special Parking Area) (East Lothian Council) Designation Order 2016 (SSI 2016/407)

Background

3. The SSI defines the area within East Lothian where Decriminalised Parking Enforcement (DPE) can be enforced. The area includes all local roads in East Lothian, while sections of the trunk road network have been excluded from the DPE area. The sections of trunk road excluded from the DPE regime will continue to be the responsibility of Police Scotland, following agreement with the Council that they are best equipped to enforce parking restrictions on these sections.

The Parking Attendants (Wearing of Uniforms) (East Lothian Council Parking Area) Regulations 2016 (SSI 2016/408)

Background

4. This SSI stipulates that a parking attendant must be wearing an identifiable uniform when carrying out their prescribed duties (issuing PCNs, removing vehicles and immobilising vehicles).

The Road Traffic (Parking Adjudicators) (East Lothian Council) Regulations 2016 (SSI 2016/409)

Background

5. This SSI provides for the adjudication process to be followed where a motorist to appeal against the issue of a penalty charge notice.

Procedure

6. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds). Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument. If the motion is agreed to, the Parliamentary Bureau must then lodge a motion to annul the instrument for consideration by the Parliament.

7. If that is also agreed to, Scottish Ministers must revoke the instrument. Each negative instrument appears on a committee agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow correspondence to be entered into or a Minister or officials invited to give evidence. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendation on it.

Consideration by the Delegated Powers and Law Reform Committee

8. The Delegated Powers and Law Reform Committee will consider these instruments at its meeting on 20 December.

9. The regulations and accompanying documents are included at Annexes A and B. They are also available online here:

[The Road Traffic \(Permitted Parking Area and Special Parking Area\) \(East Lothian Council\) Designation Order 2016 \(SSI 2016/407\)](#)

[The Parking Attendants \(Wearing of Uniforms\) \(East Lothian Council Parking Area\) Regulations 2016 \(SSI 2016/408\)](#)

[The Road Traffic \(Parking Adjudicators\) \(East Lothian Council\) Regulations 2016 \(SSI 2016/409\)](#)

Recommendation

The Committee is invited to consider any issues that it wishes to raise in reporting to the Parliament on these instruments

**Amy Kerr
Rural Economy and Connectivity Committee
December 2016**

Annex A – Correspondence from Transport Scotland Road Policy Team

Road Policy Team
Trunk Road and Bus Operations

Buchanan House, 58 Port Dundas Road, Glasgow G4 0HF
Direct Line: 0141 272 7274, Fax: 0141 272
Sharon.wood@transport.gov.scot



Claire Murrie
Assistant Clerk to the
Rural Economy and Connectivity Committee
The Scottish Parliament
EDINBURGH
EH99 1SP

Date:
28 November 2016

Dear Ms Murrie,

DECRIMINALISED PARKING ENFORCEMENT: LOCAL AUTHORITIES' INCOME AND EXPENDITURE REPORT: 2013 to 2016

Further to my letter of 17 October in response to the Rural Economy and Connectivity Committee's request for clarification on the following questions:

In the 14 local authority areas where the above regulations have been introduced, have an increase number of parking charges been raised against motorists?

Has additional revenue been generated as a consequence of the regulations and how has this been spent?

Please find enclosed a copy of our report which provides a fuller response to the questions that were asked by the Committee.

While we have endeavoured to provide all of the information sought by the Committee one local authority, East Dunbartonshire Council, has yet to respond. When we receive their information I will provide an addendum to this report.

We have also provided some information on how local authorities have spent any surplus generated under the Decriminalised Parking Enforcement (DPE) regime. However, should the Committee require further details on how each local authority has spent any surplus should be obtained from the local authority concerned.

Finally, the figures provided in tables 3 to 5 have been provided by local authorities in response to the Committee's specific request. As the information was provided differently by local authorities, we have extracted the key information to answer the Committee's specific question. As such, it is recommended that the information should not be shared outside of the Committee.

I hope the Rural Economy and Connectivity Committee finds this helpful.

Yours sincerely

Sharon Wood

Sharon Wood
Road Policy Officer

Enc.



DECRIMINALISED PARKING ENFORCEMENT

LOCAL AUTHORITIES' INCOME AND EXPENDITURE: 2013 to 2016

25 November 2016



Content

Page

Background

Scottish Government position on DPE

3

Local Authorities with DPE powers

4

Penalty charges

Penalty charge levels

5

Number of Penalty Charge Notices issued

6

Financing of DPE

6

Glossary

9

1. DECRIMINALISED PARKING ENFORCEMENT

Background

1.1 The Road Traffic Act 1991 introduced provisions enabling the decriminalisation of most non-endorsable parking offences in London and permitted similar arrangements to be introduced elsewhere in the UK by secondary legislation. 15 local authorities in Scotland currently operate Decriminalised Parking Enforcement (DPE) regimes in their areas. DPE is a regime that enables a local authority to enforce its own parking policies, including the issuing of Penalty Charge Notices (PCNs) to motorists breaching parking controls in specified areas. DPE seeks to ensure that parking policies are implemented effectively and the underlying objective of DPE operation should be to achieve 100% compliance with parking controls and therefore no penalty charges.

1.2 In areas with DPE, stationary traffic offences cease to be criminal offences enforced by the police and instead become civil penalties imposed by local authorities. Enforcement of certain parking offences such as obstructive or dangerous parking remains the responsibility of Police Scotland.

Scottish Government Position on DPE

1.3 The Scottish Government's position is that decriminalised parking enforcement powers should contribute to a local authority's overall transport objectives and thereby contribute to National and Regional Transport Strategies. Parking policies are an essential part of a local authority's traffic management strategy and should be designed to manage the traffic network effectively, improving or maintaining traffic flow and reducing congestion. This improves road safety and the local environment and encourages, where appropriate, increased use of more sustainable and healthy forms of travel.

1.4 The integration of enforcement powers and parking policy should enhance local authority accountability to its residents for overall parking policy, as well as enabling better monitoring of the effectiveness and value of parking controls to ensure that such parking policy is responsive to public needs.

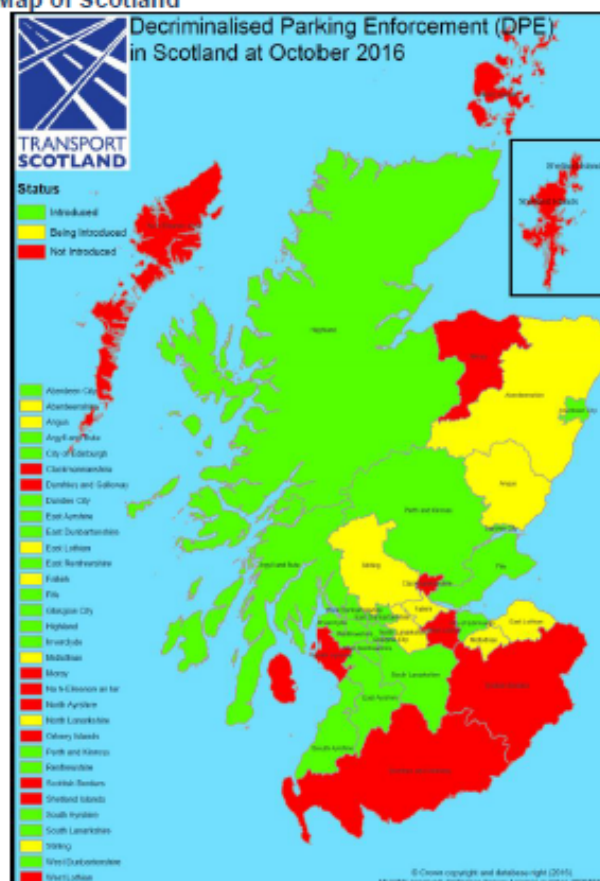
Local Authorities with DPE powers

1.5 The 15 local authorities in Scotland that have acquired DPE powers are listed in table 1. The remaining local authorities, also listed in the table, are either actively working towards DPE, such as East Lothian and Stirling Councils who are heading into the latter stages of the process, or have decided that enforcement powers are not necessary or are not desired for reasons such as cost of implementation.

Table 1 Local Authorities with or without DPE powers

DPE INTRODUCED	ACTIVELY WORKING TOWARDS DPE	NOT CURRENTLY ENGAGED WITH SG ON A DPE PROPOSAL
Aberdeen City (2003)	Aberdeenshire	Clackmannanshire
Argyll and Bute (2014)	Angus	Dumfries & Galloway
Dundee (2004)	East Lothian	Moray
East Ayrshire (2012)	Falkirk	North Ayrshire
East Dunbartonshire (2014)	Midlothian	Orkney Islands
East Renfrewshire (2013)	North Lanarkshire	Scottish Borders
Edinburgh City (1998)	Stirling	Shetland Islands
Fife (2013)		West Dunbartonshire
Glasgow (1999)		West Lothian
Highland (2016)		Western Isles
Inverclyde (2014)		
Perth and Kinross (2002)		
Renfrewshire (2010)		
South Ayrshire (2012)		
South Lanarkshire (2005)		

Figure 1 – DPE Map of Scotland



2. Penalty charges

Penalty charge levels – Background

2.1 Under section 74 of the Road Traffic Act 1991, as amended by the Orders designating the permitted and special parking areas in the local authority area, it is the duty of the local authority operating DPE to have regard to any guidance issued by the Scottish Ministers in respect of the levels of parking charges.

2.2 The current guidance¹ dates to April 2001. The amounts payable by a motorist issued with a PCN by a local authority and - for general context – in respect of parking related Fixed Penalty Notices (FPNs) issued by Police Scotland, are as follows.

2.3 PCNs (DPE) are in an initial amount of £40, £50 or £60. Those amounts are discounted by 50% if paid within 14 days or increased by 50% if certain follow-up enforcement action is required. FPNs (not DPE) are in an initial amount of £30, rising to £45 if certain follow-up enforcement action is required.

Number of PCNs issued by Local Authorities

2.4 Table 2 below indicates the number of PCNs that have been issued by local authorities with DPE powers over the last three financial years. The information is collated from information provided by the local authorities in question. Further information on these figures can be obtained from the relevant local authority.

Table 2 – Number of PCNs issued by local authorities with DPE

Local Authority	2013/14	2014/15	2015/16
Aberdeen City	47,320	46,450	37,754
Argyll & Bute	-	5,929	8,123
City of Edinburgh	181,756	179,340	184,964
Dundee City	23,180	25,415	31,332
East Ayrshire	7,597	6,232	5,391
East Dunbartonshire	-	3,948 [^]	3,331
East Renfrewshire	4,762	4,322	5,696
Fife	16,639	19,248	19,904
Glasgow City	118,245	116,937	118,902
Inverclyde	-	3,439 [^]	6,260
Perth & Kinross	11,881	9,077	7,133
Renfrewshire	10,280	7,497	7,588
South Ayrshire	7,187	6,716	5,968
South Lanarkshire	18,787	22,412	23,513

[^] Inverclyde and East Dunbartonshire Councils' DPE regimes did not commence until 2014.

¹ Road Traffic Act 1991 – Review of Penalty Charge Notice Levels Revised Guidance (2001), Scottish Executive
<http://www.gov.scot/Resource/Doc/918/0096509.pdf>

Financing of DPE

2.5 Ministers' guidance to local authorities seeking to acquire DPE powers is that the system should insofar as possible be self-financing. Section 55 of the Road Traffic Regulation Act 1984 provides that any deficit accrued by a local authority as a result of the authority's operation of DPE must be made good out of the local authority's general fund. Section 55 also requires that any surplus may only be used to make good any amount charged to the general fund over the preceding 4 years or for certain transport-related purposes including; the provision and maintenance of off-street parking or, where the local authority consider that further provision of off-street parking is not necessary or desirable, the provision or operation of (or facilities for) public passenger transport services; or for road improvement projects in the local authority area.

2.6. Under Section 55 of the 1984 Act, as amended, a local authority operating a DPE regime is required to keep an account of their income and expenditure in respect of designated parking places and additional parking charges, in the permitted and special parking areas.

2.7 The following tables provide the income and expenditure figures for each of the 14 local authorities who have been operating DPE regimes in their areas from 2013 to 2016.

Table 3 – Local authorities with DPE - income & expenditure - Financial Year 2015 – 2016

Local Authority	PCN Income	Pay & Display/other income ^A	Total Income	Expenditure	Annual Balance
Aberdeen City	£1,478,540	£7,055,888	£8,534,428	£4,153,038	£4,381,390
Argyll & Bute	£267,837	£821,425	£1,089,262	£342,600	£746,662
City of Edinburgh	£5,232,993	£20,800,099	£26,033,092*	£8,387,612	£17,645,480
Dundee City	£1,112,248	£3,372,832	£4,485,080	£3,766,114	£718,966
East Ayrshire	£204,645	£916,756	£1,121,401	£791,040	£330,404
East Dunbartonshire \$	-	-	-	-	-
East Renfrewshire	£208,460	n/a	£208,459.66	£211,686.35	-£3,227
Fife	£499,218	£2,481,369	£2,980,587	£2,386,105	£594,482
Glasgow City	£3,985,927	£330,355	£4,316,282	£5,137,089	-£820,806
Inverclyde	£277,598	£50,743	£328,341	£303,592	£24,749
Perth & Kinross	£296,377	£2,559,148	£2,855,525	£2,946,673	-£91,148
Renfrewshire	£217,620	£946,893	£1,164,513	£348,315	£816,198
South Ayrshire	£218,998	£571,760	£790,758	£407,098	£383,660
South Lanarkshire	£746,794	£1,715,332	£2,462,126	£1,642,181	£819,945

^A Other income refers to vehicle impound income and /or vehicle permit income.

* The income figures for Edinburgh City Council excludes £720,730.76 for Bus Lane Notices issued to motorists who have illegally parked in bus lanes.

& This includes £9,295,979.97 from Pay & Display charges

\$ Figures not provided.

Table 4 – Local authorities with DPE - income & expenditure – Financial Year 2014-15

Local Authority	PCN Income	Pay Display & / other income ^A	Total Income	Expenditure	Annual Balance
Aberdeen City	£1,640,090	£6,876,659	£8,516,749	£3,869,449	£4,647,300
Argyll & Bute	£232,711	£771,666	£1,004,377	£345,462	£658,915
City of Edinburgh	£5,127,332	£19,078,273 &	£24,205,605*	£8,489,793	£15,715,812
Dundee City	£749,850	£3,125,844	£3,875,694	£3,612,123	£263,571
East Ayrshire	£250,662	£838,070	£1,088,732	£781,616	£307,116
East Dunbartonshire \$	-	-	-	-	-
East Renfrewshire	£209,403	n/a	£209,403	£208,531	£872
Fife	£585,378	£2,843,427	£3,428,805	£2,736,079	£692,727
Glasgow City	£4,345,454	£373,840	£4,719,294	£5,427,363	- £708,069
Inverclyde	£132,570	£24,814	£157,384	£306,845	- £149,462
Perth & Kinross	£346,217	£2,569,571	£2,915,788	£2,348,908	£566,885
Renfrewshire	£232,783	£830,436	£1,063,219	£385,371	£677,848
South Ayrshire	£255,971	£518,985	£774,956	£404,495	£370,461
South Lanarkshire	£728,302	£1,552,602	£2,280,904	£1,508,657	£772,247

^A Other income refers to vehicle impound income and /or permit income.

* The income figures for Edinburgh excludes (£706,250.32) for Bus Lane Notices issued to motorists who have illegally parked in bus lanes.

& This includes £9,848,925.60 from Pay & Display charges

\$ Figures not provided.

Table 5 – Local authorities with DPE - income & expenditure – Financial Year 2013-14

Local Authority	PCN Income	Pay Display & / other income ^A	Total Income	Expenditure	Annual Balance
Aberdeen City	£1,837,017	£7,329,014	£9,166,031	£3,996,076	£5,169,955
City of Edinburgh	£5,261,836	£17,140,289 &	£22,402,125*	£6,232,214	£16,169,911
Dundee City	£530,039	£3,074,985	£3,605,024	£3,077,086	£527,938
East Ayrshire	£333,563	£908,024	£1,241,587.00	£942,560	£299,027
East Renfrewshire	£134,776	n/a	£134,776	£151,699	- £16,923
Fife	£425,720	£2,477,861	£2,903,581	£2,410,704	£492,877
Glasgow City	£4,329,842	£428,502	£4,758,344	£5,295,497	- £537,153
Perth & Kinross	£444,000	£2,457,000	£2,901,000	£2,246,000	£655,000
Renfrewshire	£303,585	£759,753	£1,063,338	£392,200	£671,139
South Ayrshire	£246,423	£579,622	£826,046	£499,013	£327,037
South Lanarkshire	£615,276	£1,520,996	£2,136,272	£1,496,427	£631,845

^A Other income refers to Impound income and /or Permit income.

* The income figures for Edinburgh, excludes income of (£733,735.15) for Bus Lane Notices (BLNs) issued to motorists who have illegally parked in bus lanes.

& This includes £10,456,989.45 from Pay & Display charges

2.8 The information provided in tables 3, 4 and 5 has been provided by the local authorities concerned. Figures from councils who have recently set up DPE regimes may be affected by initial setting-up costs. Figures have also been provided for pay

& display income, vehicle impound income and permit income, to inform understanding of the overall position.

2.9. The precise uses to which any DPE surpluses have been put are a matter for the relevant local authority. For the purposes of this report to committee, the Scottish Government has been advised in the generality as follows:-

- Fife Council has used most of its surplus towards road maintenance projects in the area, while Aberdeen City Council has informed that it has used surpluses on the cost of constructing new car parks or improving existing ones and additional monies have been spent on road improvement schemes around the city.
- Perth & Kinross Council advises that it has spent over £0.7 million in the last two financial years on Park & Ride facilities and car park refurbishment and South Lanarkshire Council advises that it has spent over £1.58 million between 2013/14 to 2015/16 on road maintenance schemes.
- The City of Edinburgh Council reports having spent over £30,000 on public passenger transport services, including Park & Ride facilities and road improvement projects in 2015/16. In addition, over £1 million has been provided on subsidising taxi fares and over £300,000 on operating car clubs within the area to help reduce congestion while improving journey times within the local area.
- The City of Edinburgh Council also reports funding carriageway and footway works, traffic signals renewals and bus priority schemes from surpluses. Renfrewshire Council reports having used the majority of its surplus on road improvement projects and car parking provision.

2.10. Further details on how each local authority has spent any surplus generated from DPE in any particular year should be obtained from the local authority concerned.

Glossary

BLN	Bus Lane Notice
DPE	Decriminalised Parking Enforcement
FPN	Fixed Penalty Notice
LA	Local Authorities
PCN	Penalty Charge Notice

SCOTTISH STATUTORY INSTRUMENTS

2016 No. 407

ROAD TRAFFIC

The Road Traffic (Permitted Parking Area and Special Parking Area) (East Lothian Council) Designation Order 2016

<i>Made</i>	- - - -	<i>6th December 2016</i>
-------------	---------	--------------------------

<i>Laid before the Scottish Parliament</i>		<i>8th December 2016</i>
--	--	--------------------------

<i>Coming into force</i>	- -	<i>23rd January 2017</i>
--------------------------	-----	--------------------------

The Scottish Ministers make the following Order in exercise of the powers conferred by paragraphs 1(1), 2(1) and 3(3) of schedule 3 of the Road Traffic Act 1991(a) and all other powers enabling them to do so.

In accordance with paragraphs 1(1)(d) and 2(1)(c) of that schedule they have received an application for this Order from East Lothian Council.

In accordance with paragraphs 1(3) and 2(3) of that schedule they have consulted the chief constable of the Police Service of Scotland.

Citation and commencement

1. This Order may be cited as the Road Traffic (Permitted Parking Area and Special Parking Area) (East Lothian Council) Designation Order 2016 and comes into force on 23rd January 2017.

Interpretation

2. In this Order—

“the 1991 Act” means the Road Traffic Act 1991; and

“the parking area” means the area designated as a permitted parking area and a special parking area by article 3.

Designation as permitted parking area and special parking area

3. That part of the East Lothian local government area(b) specified in schedule 1 is designated as—

(a) a permitted parking area; and

(a) 1991 c.40; paragraphs 1(1) and 2(1) of schedule 3 were relevantly amended by the Local Government etc. (Scotland) Act 1994 c.39, schedule 13, paragraph 171. The functions of the Secretary of State under that schedule, so far as they are exercisable within devolved competence, were transferred to the Scottish Ministers by section 53 of the Scotland Act 1998 (c.46).

(b) East Lothian local government area was established by section 1(2) and (4) and schedule 1 of the Local Government etc. (Scotland) Act 1994.

- (b) a special parking area.

Modifications and application of Part II of the 1991 Act

4. Sections 66, 69 to 74, 79 and 82 and schedule 6 of the 1991 Act apply in relation to the parking area subject to the modifications specified in schedule 2.

Modifications of the Road Traffic Regulation Act 1984

5. The Road Traffic Regulation Act 1984(a) is modified in relation to the parking area as specified in schedule 3.

Consequential modification

6. In relation to a parking adjudicator appointed under section 73(3) of the 1991 Act by virtue of this Order, the reference in paragraph 40(b) of schedule 1 of the Tribunals and Inquiries Act 1992(b) to a parking adjudicator appointed under section 73(3)(a) of the 1991 Act shall be construed as if it were a reference to a parking adjudicator appointed under section 73(3) of that Act by virtue of this Order.

H YOUSAF

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
6th December 2016

(a) 1984 c.27.

(b) 1992 c.53.

SCHEDULE 1

Article 3

SPECIFICATION OF PARKING AREA

The East Lothian local government area, excluding the following trunk roads in so far as they fall within the East Lothian local government area—

- (a) A1 Edinburgh - London trunk road in East Lothian from Old Craighall junction eastwards and then southeastwards to Dunglass Bridge at the Scottish Borders local government area boundary, a distance of 47.22 kilometres or thereby;
- (b) A720 City of Edinburgh Bypass in East Lothian from Midlothian local government area boundary northwards to Old Craighall junction, a distance of 810 metres or thereby.

SCHEDULE 2

Article 4

MODIFICATIONS OF PROVISIONS OF PART II OF THE ROAD
TRAFFIC ACT 1991

- 1.—(1) Section 66 is modified as follows.
- (2) In subsection (1) omit “in a designated parking place”.
 - (3) In subsection (2) omit—
 - (a) “For the purposes of this Part of the Act”; and
 - (b) paragraphs (a)(i), (b) and (c).
 - (4) In subsection (3)—
 - (a) in paragraph (d) for “the specified proportion” substitute “one half”; and
 - (b) in paragraph (e) for “London” substitute “parking”.
 - (5) Omit subsection (4).
 - (6) For subsection (5)(b) substitute—
 - “(b) the parking authority.”.
- 2.—(1) Section 69 is modified as follows.
- (2) In subsection (1)—
 - (a) omit “in a designated parking place”; and
 - (b) for “specified in section 66(2)(a), (b) or (c) of this Act” substitute “in which a penalty charge is payable”.
 - (3) In subsection (8) for the words from “London” to the end substitute “parking authority”.
- 3.—(1) Section 71 is modified as follows.
- (2) In subsection (1) for “a London” substitute “the parking”.
 - (3) For subsection (4) substitute—
 - “(4) The grounds are—
 - (a) that there were no reasonable grounds for the parking attendant concerned to believe that the vehicle had been permitted to remain at rest in the parking area in circumstances in which a penalty charge was payable;
 - (b) that the vehicle had been permitted to remain at rest in the place where it was by a person who was in control of the vehicle without the consent of the owner;
 - (c) that the place where the vehicle was at rest was not in the parking area;
 - (d) in a case within subsection (1)(d) above, that, by virtue of an exemption given by section 70 of this Act, section 69 of this Act did not apply to the vehicle in question at the time in question; or
 - (e) that the penalty or other charge in question exceeded the amount applicable in the circumstances of the case.”.
 - (4) In subsection (8)(b) for “costs” substitute “expenses”.
- 4.—(1) Section 73 is modified as follows.
- (2) Omit subsections (1), (1A) and (2).
 - (3) For subsection (3) substitute—
 - “(3) The traffic commissioner must, with the consent of the Lord Advocate, appoint persons to act as parking adjudicators.”.
 - (4) After subsection (3) insert—

“(3A) A parking adjudicator appointed by virtue of this section is authorised to act as a parking adjudicator in relation to the parking area.

(3B) The parking authority, after consultation with the traffic commissioner—

(a) must—

(i) provide, or enter into arrangements for the provision of, accommodation and administrative staff for the parking adjudicators acting in relation to the parking area; and

(ii) determine the places at which such parking adjudicators are to sit; and

(b) may enter into arrangements for the remuneration of such parking adjudicators.”.

(5) In subsection (4) for the words from “have” to the end substitute “be an advocate or solicitor of at least five years’ standing”.

(6) In subsection (5) for “appointing authorities” substitute “traffic commissioner”.

(7) For subsections (8) to (10) substitute—

“(8) The reasonable expenses of the traffic commissioner incurred in connection with the discharge of the duties imposed on him by this section, shall be met by the parking authority.”.

(8) In subsection (11) for “The Secretary of State” substitute “The Scottish Ministers”.

(9) In subsection (12)—

(a) in each of paragraphs (i) and (j) for “costs” substitute “expenses”; and

(b) in paragraph (j) for “county” substitute “sheriff”.

(10) In subsection (15) for the words from “if a” to the end substitute “be recoverable by the person to whom the amount is payable as if it were payable under an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court for any sheriffdom in Scotland”.

(11) In subsection (17) for “Joint Committee”, in each place where it occurs, substitute “parking authority”.

(12) In subsection (18)—

(a) for “Joint Committee” substitute “parking authority”; and

(b) for “the Secretary of State” substitute “the Scottish Ministers”.

5. For section 74 substitute—

“Fixing of certain parking and other charges for parking area

74.—(1) It shall be the duty of the parking authority to set the levels of additional parking charges to apply in the parking area.

(2) Different levels may be set for different parts of the parking area.

(3) The levels of additional parking charges set by the parking authority under this section shall accord with any guidance given by the Scottish Ministers whether such guidance is given specifically to the parking authority or to local authorities generally.

(4) Any guidance given by the Scottish Ministers under subsection (3) above may be varied at any time by them.

(5) The parking authority must publish, in such manner as the Scottish Ministers may determine, the levels of additional parking charges which have been set under this section.

(6) In this section “additional parking charges” means penalty charges, charges made by the parking authority for the removal, storage and disposal of vehicles and charges for the release of vehicles from immobilisation devices fixed under section 69 of this Act.”.

6.—(1) Section 82 is modified as follows.

(2) For subsection (1) substitute—

- “(1) In this section and sections 66, 69 to 74 and 79 of, and schedule 6 of, this Act(a)—
- “hiring agreement” and “vehicle-hire firm” have the same meanings as in section 66 of the Road Traffic Offenders Act 1988(b);
- “immobilisation device” has the same meaning as in section 104(9) of the Road Traffic Regulation Act 1984(c);
- “parking area” means the area designated as a permitted parking area and a special parking area by the Road Traffic (Permitted Parking Area and Special Parking Area) (East Lothian Council) Designation Order 2016(d);
- “parking attendant” has the same meaning as in section 63A(e) of the Road Traffic Regulation Act 1984;
- “parking authority” means—
- (a) in relation to a parking place which was provided or authorised under section 32(1) of the Road Traffic Regulation Act 1984, the local authority as defined by section 32(4)(a) of that Act in relation to the parking place;
- (b) in any other case, the traffic authority (other than the Scottish Ministers) as defined by section 121A(f) of that Act;
- “penalty charge” means a penalty charge which is payable by virtue of paragraph 3(1) and (2) of schedule 3 of this Act;
- “prescribed” means prescribed by regulations made by the Scottish Ministers; and
- “traffic commissioner” means the traffic commissioner appointed for the Scottish Traffic Area under section 4 of the Public Passenger Vehicles Act 1981(g).”

(3) In subsection (5) for “London authority concerned” substitute “parking authority”.

(4) In subsection (6) for “a Minister of the Crown” substitute “the Scottish Ministers”.

(5) In subsection (7) for “either House of Parliament” substitute “the Scottish Parliament”.

7.—(1) Schedule 6 is modified as follows.

(2) In paragraph 1(1) for “London authority concerned” substitute “parking authority”.

(3) In paragraph 2—

- (a) in subparagraph (1) for the words from “London” to the end substitute “parking authority”;
- (b) in subparagraph (2) for the words from “such” to the end substitute “writing”;
- (c) in subparagraph (3) after “The”, where it first occurs, insert “parking”;
- (d) in subparagraph (4)(c) for “place” substitute “area”; and
- (e) in subparagraph (7) for “an authority to whom representations are duly made” substitute “the parking authority when representations are duly made to it”.

(4) In paragraph 3(1) and (2) for “London authority concerned” in each place where it occurs substitute “parking authority”.

(5) In paragraph 4—

- (a) For “London authority concerned” substitute “parking authority”;
- (b) in subparagraph (b), for “costs” substitute “expenses”; and
- (c) for “authority consider appropriate” substitute “parking authority considers appropriate”.

(a) Road Traffic Act 1991 (c.40).

(b) 1988 c.53.

(c) 1984 c.27.

(d) S.S.I. 2016/407.

(e) Section 63A was inserted by the 1991 Act, section 44(1).

(f) Section 121A was inserted by the New Roads and Street Works Act 1991 (c.22), schedule 8, paragraph 70.

(g) 1981 c.14.

- (6) In paragraph 5—
 - (a) in subparagraph (1)—
 - (i) for “an authority” substitute “the parking authority”; and
 - (ii) for “authority’s decision” substitute “parking authority’s decision”;
 - (b) in subparagraph (2) for “London authority concerned” substitute “parking authority”; and
 - (c) in subparagraph (3) for the words from “any” to the end substitute “the parking authority to comply with any direction given to it under subparagraph (2) above”.
- (7) In paragraph 6—
 - (a) in subparagraph (1) for “authority serving the notice” substitute “parking authority”; and
 - (b) in subparagraph (2)(b)(ii) for “authority concerned” substitute “parking authority”.
- (8) In paragraph 7 for the words from “authority concerned” to the end substitute “parking authority may recover the increased charge as if the charge certificate were an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court in any sheriffdom in Scotland”.
- (9) Omit paragraph 8.

SCHEDULE 3

Article 5

MODIFICATIONS OF THE ROAD TRAFFIC REGULATION ACT
1984

1. In section 46(1A)(a) for “Greater London” substitute “the parking area”.
- 2.—(1) Section 55 is modified as follows.
 - (2) For subsection (1) substitute—

“(1) A local authority must keep an account—

 - (a) of their income and expenditure in respect of designated parking places for which they are the local authority and which are in the permitted parking area; and
 - (b) of their income from additional parking charges (as defined in section 74(6) of the Road Traffic Act 1991) received by them in respect of vehicles found within the special parking area and the expenditure incurred by them in relation to that area by virtue of any provision of Part II of the Road Traffic Act 1991 as it applies in relation to that area.

(1A) As soon as reasonably practicable after the end of each financial year, the local authority must send to the Scottish Ministers a copy of the account for that year.”
 - (3) Omit subsections (3A) and (3B)(b).
3. In section 63A(4)(c)—
 - (a) for “Greater London”, where it first occurs, substitute “the parking area”; and
 - (b) for “Greater London Authority” substitute “Scottish Ministers”.
- 4.—(1) Section 101 is modified as follows.
 - (2) Omit subsection (4).
 - (3) In subsection (4A)(d) for “Greater London” substitute “the parking area”.
 - (4) Omit subsection (5).
 - (5) In subsection (5A)(e) for “Greater London” substitute “the parking area”.
- 5.—(1) Section 102 is modified as follows.
 - (2) For subsection (1) substitute—

“(1) If a vehicle is removed by the local authority in circumstances in which an offence would have been committed but for the provisions of paragraph 1(4) or 2(4) of schedule 3 to the Road Traffic Act 1991, the local authority will be entitled to recover from any persons responsible such charges in respect of the removal, storage and disposal of the vehicle as they may require.”
 - (3) Omit subsections (2) and (3).
 - (4) For subsection (4) substitute—

“(4) Without prejudice to subsection (1) above, where any sum is recoverable in respect of a vehicle by a local authority in whose custody the vehicle is, the local authority shall be entitled to retain custody of it until that sum has been paid.”
 - (5) In subsection (5) for “an authority” substitute “the local authority”.

(a) Section 46(1A) was inserted by the Road Traffic Act 1991 (“the 1991 Act”), section 64(2).
 (b) Sections 55 (3A) and (3B) were inserted by the 1991 Act, schedule 7, paragraph 5.
 (c) Section 63A was inserted by the Road Traffic Act 1991 (“the 1991 Act”), section 44(1).
 (d) Section 101(4A) was inserted by the 1991 Act, section 67(4).
 (e) Section 101(5A) was inserted by the 1991 Act, section 67(6).

(6) Omit subsections (6) and (7).

(7) In subsection (8) in paragraph (b) of the definition of “appropriate authority”, for the words “outside Greater London” substitute “within the parking area”.

6. In section 134 for the references to “the Secretary of State” substitute references to “the Scottish Ministers” and for the references to “each House of Parliament” substitute references to “the Scottish Parliament”.

7. In section 142(1)—

(a) after the definition of “owner” insert—

““parking area” means the area designated as a permitted parking area and a special parking area by the Road Traffic (Permitted Parking Area and Special Parking Area) (East Lothian Council) Designation Order 2016; and “permitted parking area” and “special parking area” are to be read accordingly;”;

(b) in the definition of “prescribed” for “the Secretary of State” substitute “the Scottish Ministers”.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order extends, to the area of East Lothian Council, arrangements for enforcing parking controls already available in London and certain other areas in England and in Edinburgh, Glasgow, Perth and Kinross, Aberdeen, Dundee, South Lanarkshire, Renfrewshire, East Renfrewshire, East Ayrshire, South Ayrshire, Fife, East Dunbartonshire, Argyll and Bute, Inverclyde and the Highland Council area.

The Order designates East Lothian local government area (with certain specified exceptions) as a permitted parking area and as a special parking area in accordance with schedule 3 of the Road Traffic Act 1991 (“the 1991 Act”). The Order applies, to the designated area, various provisions of the 1991 Act and modifies them where necessary. It also makes consequential modifications to certain provisions of the Road Traffic Regulation Act 1984 (“the 1984 Act”) dealing with parking and related matters.

While the Order is in force, certain specified offences will be decriminalised: for example, in the case of the permitted parking area, breaches of orders relating to free on-street parking places and, in the case of the special parking area, orders prohibiting or restricting waiting, loading and unloading.

Enforcement will be carried out by parking attendants provided under section 63A of the 1984 Act. A system of parking adjudicators will deal with disputes.

SCOTTISH STATUTORY INSTRUMENTS

2016 No. 408

ROAD TRAFFIC

The Parking Attendants (Wearing of Uniforms) (East Lothian Council Parking Area) Regulations 2016

<i>Made</i>	- - - -	<i>6th December 2016</i>
<i>Laid before the Scottish Parliament</i>		<i>8th December 2016</i>
<i>Coming into force</i>	- -	<i>23rd January 2017</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 63A(4) of the Road Traffic Regulation Act 1984(a) and all other powers enabling them to do so.

In accordance with section 134(2) of that Act they have consulted with such representative organisations as they think fit.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Parking Attendants (Wearing of Uniforms) (East Lothian Council Parking Area) Regulations 2016 and come into force on 23rd January 2017.

(2) In these Regulations—

“the 1984 Act” means the Road Traffic Regulation Act 1984;

“the 1991 Act” means the Road Traffic Act 1991(b); and

“the East Lothian Council parking area” means the area designated as a permitted parking area and a special parking area by article 3 of the Road Traffic (Permitted Parking Area and Special Parking Area) (East Lothian Council) Designation Order 2016(c).

Prescribed functions

2.—(1) All functions conferred on parking attendants by or under the enactments mentioned in paragraph (2) are prescribed for the purposes of section 63A(4) of the 1984 Act (wearing of uniforms by parking attendants when exercising prescribed functions) in its application to the East Lothian Council parking area.

(2) The enactments referred to in paragraph (1) are—

(a) section 99 of the 1984 Act (removal of vehicles);

(a) 1984 c.27. Section 63A was inserted by the Road Traffic Act 1991 c.40, section 44; section 142(1) contains a definition of “prescribed” relevant to the making of these Regulations. Section 63A and 142(1) are modified in relation to the East Lothian Council parking area by the Road Traffic (Permitted Parking Area and Special Parking Area) (East Lothian Council) Designation Order 2016, S.S.I. 2016/407. The functions of the Secretary of State, so far as they are exercisable within devolved competence, were transferred to the Scottish Ministers by section 53 of the Scotland Act 1998 c.46.

(b) 1991 c.40.

(c) S.S.I. 2016/407.

- (b) section 66(1) of the 1991 Act (issue of a penalty charge notice)(a); and
- (c) section 69 of the 1991 Act (immobilisation of vehicles).

H YOUSAF

Authorised to sign on behalf of the Scottish Ministers

St Andrew's House,
Edinburgh
6th December 2016

(a) Sections 66 and 69 of the 1991 Act are modified in relation to the East Lothian Council parking area by the Road Traffic (Permitted Parking Area and Special Parking Area) (East Lothian Council) Designation Order 2016.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe functions during the exercise of which a parking attendant must wear such uniform as the Scottish Ministers may determine (regulation 2).

The requirement to wear a uniform is contained in section 63A(4) of the Road Traffic Regulation Act 1984. Section 63A itself applies to Greater London only but by virtue of the Road Traffic (Permitted Parking Area and Special Parking Area) (East Lothian Council) Designation Order 2016 that section is modified so as to apply to the parking area designated by that Order. Accordingly, parking attendants exercising the prescribed functions within that parking area are required to wear a uniform when doing so.

SCOTTISH STATUTORY INSTRUMENTS

2016 No. 409

ROAD TRAFFIC

**The Road Traffic (Parking Adjudicators) (East Lothian Council)
Regulations 2016**

<i>Made</i> - - - - -	<i>6th December 2016</i>
<i>Laid before the Scottish Parliament</i>	<i>8th December 2016</i>
<i>Coming into force</i> - - -	<i>23rd January 2017</i>

ARRANGEMENT OF REGULATIONS

PART I

Preliminary

1. Citation and commencement
2. Interpretation

PART II

Procedure relating to Appeals

3. Making an appeal
4. Action upon receipt of notice of appeal and copy
5. Further representations
6. Power to require attendance of witnesses
7. Disposing of an appeal without a hearing
8. Notice of time and place of hearing
9. Procedure at a hearing
10. Decisions on appeals
11. Review of adjudicator's decision
12. Expenses
13. Conjoining of appeals
14. Miscellaneous powers of the adjudicator
15. Clerical errors
16. Sending of documents

PART III

The Register

17. The Register

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 73(11) and (12) of the Road Traffic Act 1991(a) and all other powers enabling them to do so.

PART I

Preliminary

Citation and commencement

1. These Regulations may be cited as the Road Traffic (Parking Adjudicators) (East Lothian Council) Regulations 2016 and come into force on 23rd January 2017.

Interpretation

2—(1) In these Regulations—

“the Act” means the Road Traffic Act 1991;

“adjudicator” means a parking adjudicator appointed under section 73(3) of the Act;

“appeal” means an appeal under section 72 or paragraph 5 of schedule 6 of the Act;

“fax” means the making of a facsimile copy of a document by the transmission of electronic signals;

“hearing” means an oral hearing;

“proper officer” means a member of the administrative staff provided under section 73(3B)(a)(i)(b) of the Act appointed to perform the duties of the proper officer under these Regulations; and

“register” means the register of appeals and decisions kept in pursuance of these Regulations.

(2) In these Regulations, in relation to an appeal or any process connected with an appeal—

“appellant” means the person making the appeal;

“disputed decision” means a decision of the parking authority against which an appeal is made under these Regulations;

“original representations” means the representations made to the parking authority under section 71 or paragraph 2 of schedule 6 of the Act; and

“parking authority” has the meaning ascribed to it in section 82(1) of the Act(c).

(3) Unless the context otherwise requires, any reference in these Regulations to—

(a) a provision of the Act is a reference to that provision as applied and, where appropriate, modified by the Road Traffic (Permitted Parking Area and Special Parking Area) (East Lothian Council) Designation Order 2016;

(b) a numbered regulation is a reference to the regulation bearing that number in these Regulations; and

(c) a numbered paragraph is a reference to the paragraph bearing that number in the regulation in which that reference appears.

(a) 1991 c.40; section 82(1) contains a definition of “prescribed” relevant to the making of these Regulations. The functions of the Secretary of State so far as they are exercisable within devolved competence were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(b) Section 73(3B)(a)(i) was inserted by schedule 2 of the Road Traffic (Permitted Parking Area and Special Parking Area) (East Lothian Council) Designation Order 2016, S.S.I. 2016/407.

(c) A definition of “parking authority” was inserted by schedule 2 of the Road Traffic (Permitted Parking Area and Special Parking Area) (East Lothian Council) Designation Order 2016.

PART II

Procedure relating to Appeals

Making an appeal

3.—(1) An appeal is to be made by a notice of appeal sent to the proper officer.

(2) A notice of appeal—

- (a) must state the full name and address of the appellant;
- (b) may specify some other address as being the address to which the appellant wishes documents to be sent to him or her in connection with the appeal;
- (c) must state the date and reference number of the disputed decision; and
- (d) may include any representations which the appellant desires to make in addition to the original representations.

(3) If the appeal is made later than the time limit mentioned in section 72(1) or (as the case may be) paragraph 5(1) of schedule 6 of the Act the notice of appeal must include a statement of the reasons on which the appellant relies for justifying the delay, and the adjudicator must treat any such statement of reasons as a request for extending that time limit.

(4) The notice of appeal must be signed by the appellant or his or her authorised representative.

Action upon receipt of notice of appeal and copy

4.—(1) Upon receiving a notice of appeal in accordance with regulation 3 the proper officer must—

- (a) send an acknowledgement of receipt to the appellant;
- (b) enter particulars of the appeal in the register; and
- (c) send to the parking authority a copy of the notice of appeal and any direction extending the time limit for appealing.

(2) Upon receiving a copy of the notice of appeal in accordance with paragraph (1)(c), the parking authority must within 21 days send to the proper officer a copy of—

- (a) the original representations;
- (b) the relevant penalty charge notice (if any) issued under section 66(1) of the Act; and
- (c) the notice served under section 71(6) or (as the case may be) paragraph 2(7) of schedule 6 of the Act.

Further representations

5.—(1) Any party to an appeal under these Regulations may send representations to the proper officer at any time before that appeal is determined.

(2) The adjudicator may invite a party to send to the proper officer representations dealing with any matter relating to an appeal within such time and in such a manner as may be specified.

(3) Where a party fails to respond to an invitation under paragraph (2), the adjudicator may draw such inferences as appear to him or her proper.

(4) Any representations sent under this regulation must be signed by the party concerned or his or her authorised representative.

(5) Where the appellant sends representations to the proper officer under this regulation, the proper officer must send a copy of the representations to the parking authority.

(6) Where the parking authority sends representations to the proper officer under this regulation, it must at the same time send a copy of those representations to the appellant.

(7) This regulation is without prejudice to the powers of an adjudicator under regulation 9.

Power to require attendance of witnesses

6.—(1) The adjudicator may require the attendance of any person (including a party to the proceedings) as a witness, at a time and place specified by him or her, at the hearing of an appeal and require the person to answer any questions or produce any document in the person's custody or control which relate to any matter in the proceedings.

(2) Where the adjudicator makes a requirement under paragraph (1) the adjudicator must make reference to the fact that, under section 73(14) of the Act, any person who without reasonable excuse fails to comply with this requirement is liable on summary conviction to a fine, and the adjudicator must state the amount of the maximum fine current at that time.

(3) A person in respect of whom a requirement has been made under paragraph (1) may apply to the adjudicator to vary or set aside that requirement.

(4) A person is not bound to comply with the requirement under paragraph (1) unless he or she has been given at least 7 days' notice of the hearing or, if less than 7 days, the person has informed the adjudicator that he or she accepts such notice as he or she has been given.

(5) A person other than an appellant is not bound to comply with the requirement under paragraph (1) unless the necessary expenses of his or her attendance are paid or tendered to him or her.

(6) No person is required to give any evidence or produce any document under paragraph (1) which he or she could not be required to give or produce in proceedings before a court.

Disposing of an appeal without a hearing

7.—(1) Subject to paragraph (2), the adjudicator may dispose of an appeal without a hearing.

(2) The adjudicator must not dispose of an appeal without a hearing if either party has requested a hearing unless—

- (a) the party who made the request withdraws his or her request before notice of a hearing has been sent to the other party under regulation 8; or
- (b) both parties have subsequently consented to the appeal being disposed of without a hearing.

(3) Unless both parties consent to the disposal taking place on an earlier date, the adjudicator must not dispose of an appeal without a hearing until after the expiry of 28 days beginning on the day an acknowledgement is sent in accordance with regulation 4.

(4) Notwithstanding anything in paragraphs (2) and (3), if both parties, having been sent a notice of the hearing of an appeal in accordance with regulation 8, fail to attend or be represented at the hearing, the adjudicator may subsequently dispose of the appeal without a hearing.

Notice of time and place of hearing

8.—(1) This regulation has effect where a hearing is to be held for the purpose of disposing of an appeal.

(2) The proper officer must fix the time and place of the hearing and, not less than 28 days (or such shorter time as the parties may agree) before the date so fixed, send to each party a notice that the hearing is to be at such time and at such place or notify them in such other manner as he or she thinks fit.

(3) The adjudicator may alter the time and place of any hearing and the proper officer must, not less than 7 days (or such shorter time as the parties may agree) before the date on which the hearing is then to be held, send to each party notice of the time and place of the hearing as altered or notify them in such other manner as he or she thinks fit.

(4) This regulation applies to an adjourned hearing but, if the time and place of the adjourned hearing are announced before the adjournment, no further notice is required.

Procedure at a hearing

9.—(1) At the beginning of the hearing the adjudicator must explain the procedure which he or she proposes to adopt.

(2) Subject to the provisions of this regulation, the adjudicator must conduct the hearing of an appeal in such manner as he or she considers most suitable to the clarification of the issues before him or her and generally to the just handling of the proceedings and he or she must, so far as appears to him or her appropriate, seek to avoid formality in the proceedings.

(3) A hearing of an appeal must be held in public except where the adjudicator is satisfied that, by reason of exceptional circumstances, it is just and reasonable for the hearing, or part of the hearing, to be held in private.

(4) Any adjudicator appointed under section 73(3) of the Act may attend the hearing of an appeal whether or not it is held in private.

(5) The adjudicator, with the consent of the parties, may permit any other person to attend the hearing of an appeal which is held in private.

(6) Without prejudice to any other powers the adjudicator may have, he or she may exclude from the hearing of an appeal, or part of it, any person whose conduct has disrupted or is likely, in the opinion of the adjudicator, to disrupt the hearing.

(7) Subject to paragraph (8), at the hearing of an appeal the appellant may conduct his or her case him or herself (with the assistance of any person he or she wishes) or may appear and be represented by any person whether or not legally qualified.

(8) If in any particular case the adjudicator is satisfied that there are good and sufficient reasons for doing so, he or she may refuse to permit a particular person to assist or represent the appellant at the hearing.

(9) At the hearing of an appeal—

- (a) the parties are entitled to give evidence, to call witnesses, to question any witnesses and to address the adjudicator both on the evidence and generally on the subject matter of the appeal; and
- (b) the adjudicator may receive evidence of any fact which appears to him or her to be relevant notwithstanding that such evidence would be inadmissible in proceedings before a court.

(10) Without prejudice to regulation 7(4), where a party who has been sent a notice of the hearing of an appeal or otherwise notified of the hearing in accordance with regulation 8, fails to attend or be represented at the hearing, the adjudicator may dispose of the appeal in his or her absence.

Decisions on appeals

10.—(1) Where an appeal is disposed of at a hearing, the decision of the adjudicator may be given orally at the end of the hearing or reserved.

(2) Where an appeal has been disposed of, whether at a hearing or otherwise, the decision when given must be entered forthwith in the register with (save in the case of a decision by consent) a statement of the reasons for the decision and the proper officer must send a copy of that entry to each party.

Review of adjudicator's decision

11.—(1) The adjudicator has power, on the application of a party, to review and revoke or vary any decision to dismiss or allow an appeal or any decision as to expenses on the grounds in each case that—

- (a) the decision was wrongly made as the result of an error on the part of his or her administrative staff;

- (b) a party who had failed to appear or be represented at a hearing had good and sufficient reason for his or her failure to appear;
 - (c) where the decision was made after a hearing, new evidence has become available since the conclusion of the hearing the existence of which could not have been reasonably known of or foreseen;
 - (d) where the decision was made without a hearing, new evidence has become available since the decision was made, the existence of which could not have been reasonably known of or foreseen; or
 - (e) the interests of justice require such a review.
- (2) An adjudicator has power, on the application of a party, to review and revoke or vary any interlocutory decision.
- (3) An application under this regulation must be made to the proper officer within 14 days after the date on which a copy of the entry of the decision was sent to the parties and must state in full the grounds for that application.
- (4) The parties have the opportunity to be heard on any application for review under this regulation and if, having reviewed the decision, the adjudicator directs the decision to be revoked, he or she shall substitute such decision as he or she thinks fit or order a redetermination by either the same or a different adjudicator.
- (5) Regulation 10 applies to a decision under paragraph (1) as it applies to a decision made on the disposal of an appeal.

Expenses

12.—(1) The adjudicator is not normally to make an order as to expenses but may, subject to paragraph (2), make such an order—

- (a) against a party (including an appellant who has withdrawn his or her appeal or the parking authority if that authority has consented to an appeal being allowed) if he or she is of the opinion that that party has acted frivolously or vexatiously or that that party's conduct in making, pursuing or resisting an appeal was wholly unreasonable; or
- (b) against the parking authority where he or she considers that the disputed decision was wholly unreasonable.

(2) An order is not to be made under paragraph (1) against a party unless that party has been given an opportunity to make representations against the making of the order.

(3) An order under paragraph (1) is to require the party against whom it is made to pay to the other party a specified sum in respect of the expenses incurred by that other party in connection with the proceedings.

Conjoining of appeals

13.—(1) Where there are two or more appeals pending and at any time it appears to the adjudicator that—

- (a) some common question of law or fact arises in both or all the appeals; or
- (b) for some other reason it is desirable to make an order under this regulation,

the adjudicator may, subject to paragraph (2), order that some or all of the appeals as may be specified in the order are to be considered together and may give such consequential directions as he or she may consider necessary.

(2) An order is not to be made under this regulation unless all parties concerned have been given an opportunity to make representations about the making of such an order.

Miscellaneous powers of the adjudicator

14.—(1) The adjudicator may, if he or she thinks fit—

- (a) extend the time appointed by or under these Regulations for doing any act notwithstanding that the time appointed may have expired;
- (b) if the appellant at any time gives notice of the withdrawal of his or her appeal, dismiss the proceedings;
- (c) if the parking authority consents to an appeal being allowed, allow the appeal;
- (d) if both or all of the parties agree in writing on the terms of a decision to be made by an adjudicator, decide accordingly; or
- (e) adjourn a hearing.

(2) The powers of the adjudicator conferred by—

- (a) these Regulations (other than regulation 11);
- (b) section 72(1)(b) of the Act; and
- (c) paragraph 5(1)(b) of schedule 6 of the Act,

may be exercised on his or her own motion or on the application of a party.

Clerical errors

15. Clerical errors or omissions in any document recording a direction or decision of the adjudicator may be corrected by the proper officer on the direction of the adjudicator.

Sending of documents

16.—(1) This regulation has effect in relation to any notice or other document required or authorised by these Regulations to be sent to a party to an appeal, to the proper officer or to any other person.

(2) Subject to paragraph (3), any such document is to be regarded as having been sent to the person concerned if it is—

- (a) delivered to him or her personally;
- (b) left at his or her proper address;
- (c) sent to him or her at that address by post or through a document exchange; or
- (d) transmitted to him or her by fax or other means of electronic data transmission in accordance with paragraphs (3), (4) and (5).

(3) A document may be transmitted by fax where the person concerned has indicated in writing that he or she is willing to regard the document as having been duly sent to him or her if it is transmitted to a specified fax number and the document is transmitted to that number.

(4) In the case of the parking authority, an indication under paragraph (3) can be expressed to apply to any appeal to which it is a respondent.

(5) Paragraphs (3) and (4) apply with the appropriate modification to a transmission of electronic data other than by fax as it applies to a transmission by fax.

(6) Regulations 3(4) and 5(4)—

- (a) are, in the case of a document transmitted by fax, satisfied if a copy of the signature of the relevant person appears on the transmitted copy; and
- (b) do not apply in relation to a document transmitted by other means of electronic data transmission.

(7) Where the proper address includes a numbered box number at a document exchange, a document may be sent by leaving the document addressed to that numbered box at that document exchange or at a document exchange which transmits documents every business day to that

exchange; and any document which is left at a document exchange in accordance with this paragraph is, unless the contrary is proved, deemed to have been delivered on the second business day following the day on which it is left.

(8) For the purposes of these Regulations and of section 7 of the Interpretation Act 1978(a) in its application to this regulation—

- (a) the proper address of the appellant is the address specified in his or her notice of appeal pursuant to regulation 3(2)(b) or (if no such address is so specified) the address stated pursuant to paragraph (2)(a) of that regulation; and
- (b) the proper address of the parking authority in proceedings in which it is the respondent is such address as the parking authority from time to time specifies in a notice sent to the proper officer as being the proper address in all such proceedings.

(9) If no address has been specified or stated, the proper address for the purposes of these Regulations and section 7 of the Interpretation Act 1978 is—

- (a) in the case of an individual, his or her usual or last known address;
- (b) in the case of a partnership, the principal or last known place of business within the United Kingdom; or
- (c) in the case of an incorporated or unincorporated body, the registered or principal office of that body.

(10) An appellant may at any time by notice in writing to the proper officer change his or her proper address for the purposes of these Regulations and section 7 of the Interpretation Act 1978.

(11) A party may by notice in writing sent to the proper officer vary or revoke any indication given by him or her under paragraph (3).

PART III

The Register

The Register

17.—(1) The register must be kept at the principal office of the adjudicator and is to be open to the inspection of any person without charge at all reasonable hours.

(2) The register need not be kept in visible or legible form.

(3) If the register is kept otherwise than in a visible or legible form, the duty to allow inspection is to be treated as a duty to allow inspection of a reproduction in legible form of the entry the inspection of which is being sought.

(4) A document purporting to be certified by the proper officer to be a true copy of any entry of a decision in the register is sufficient evidence of that entry and of the matters contained therein.

H YOUSAF

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
6th December 2016

(a) 1978 c.30.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe the procedure to be followed in relation to appeals before parking adjudicators against decisions of the parking authority under a decriminalised parking regime in East Lothian local government area (regulations 3-16). The parking adjudicators are appointed under section 73 of the Road Traffic Act 1991 ("the 1991 Act"). That section, along with other provisions of that Act relating to the decriminalisation of certain parking offences, is applied with modifications, where appropriate, to East Lothian Council parking area by the Road Traffic (Permitted Parking Area and Special Parking Area) (East Lothian Council) Designation Order 2016.

The procedure relates to appeals under section 72 and paragraph 5 of schedule 6 of the 1991 Act.

Annexe C – Policy note**POLICY NOTE****THE ROAD TRAFFIC (PERMITTED PARKING AREA AND SPECIAL PARKING AREA) (EAST LoTHIAN COUNCIL) DESIGNATION ORDER 2016
SSI 2016/407****THE PARKING ATTENDANTS (WEARING OF UNIFORMS) (EAST LoTHIAN COUNCIL PARKING AREA) REGULATIONS 2016
SSI 2016/408****THE ROAD TRAFFIC (PARKING ADJUDICATORS) (EAST LoTHIAN COUNCIL) REGULATIONS 2016
SSI 2016/409**

1. The above instruments were made in exercise of powers conferred by paragraphs 1(1), 2(1) and 3(3) of schedule 3 to the Road Traffic Act 1991, section 63A(4) of the Road Traffic Regulation Act 1984, and section 73(11) and (12) of the Road Traffic Act 1991 respectively. The instruments are subject to negative resolution procedures before the Scottish Parliament.

Policy Objectives and background

2. The purpose of the three Scottish Statutory Instruments is to introduce a decriminalised parking regime within the East Lothian Council area.

3. The Road Traffic Act 1991 introduced provisions enabling the decriminalisation of most non-endorsable parking offences in London and permitted similar arrangements to be introduced elsewhere in the UK. Decriminalised Parking Enforcement (DPE) is a regime which enables a local authority to enforce its own parking policies, including the issuing of Penalty Charge Notices (PCNs) to motorists breaching parking controls in specific areas. DPE seeks to ensure that parking policies are implemented effectively and the underlying objective of the DPE operation is to achieve 100% compliance with parking controls and no penalty charges.

4. Previously, and continuing for authorities that have not introduced DPE, income generated from fines arising from parking infringements accrue to the Exchequer as these are non-endorsable criminal offences. Under DPE, enforcement powers no longer rest with the police but are implemented by parking attendants employed either directly by, or under contract to, the local authority. As such, a breach of parking rules within an area where DPE is in force requires payment to the local authority of a penalty charge Notice.

5. To date, 15 Scottish local authorities have now introduced DPE within their

areas. Under these arrangements, local authorities seeking DPE powers need to ensure that the operation should insofar as possible be self-financing. Section

55 of the Road Traffic Regulation Act 1984 provides that any deficit accrued by a local authority as a result of the authority's operation of DPE must be made good out of the local authority's general fund. Section 55 also requires that any surplus may only be used to make good any amount charged to the general fund over the preceding 4 years or for certain transport-related purposes including; the provision and maintenance of off-street parking or, where the local authority consider that further provision of off-street parking is not necessary or desirable, the provision or operation of (or facilities for) public passenger transport services; or for road improvement projects in the local authority area.

The Road Traffic (Permitted Parking Area and Special Parking Area) (East Lothian Council) Designation Order 2016 (S.S.I. 2016/407)

6. The SSI defines the area within East Lothian where DPE applies. This area covers all local roads in East Lothian, while sections of the trunk road network have been excluded from the DPE area. The sections of trunk road excluded from the DPE regime will continue to be the responsibility of Police Scotland, following agreement with the Council that they are best equipped to enforce parking restrictions on these sections.

The Parking Attendants (Wearing of Uniforms) (East Lothian Council) Regulations 2016 (S.S.I. 2016/408)

7. This SSI stipulates that a parking attendant must be wearing an identifiable uniform when carrying out their prescribed duties (issuing PCNs, removing vehicles and immobilising vehicles).

The Road Traffic (Parking Adjudicators) (East Lothian Council) Regulations 2016 (S.S.I. 2016/409)

8. This SSI provides for the adjudication process to be followed where a motorist wishes to appeal against the issue of a penalty charge notice.

Consultation

9. All statutory requirements regarding the consultation for these three Scottish Statutory Instruments have been carried out. We received responses from the Scottish Borders Council and the Traffic Commissioner for Scotland in relation to East Lothian Council's draft SSIs, in which they both had no comment or objection to the proposals. We received no further comments from Police Scotland, the City of Edinburgh Council, West Lothian and Midlothian Councils and the Parking & Bus Lane Tribunal for Scotland in relation to the draft SSIs.

10. The Traffic Commissioner for Scotland's response also acknowledged our commitment to review the changes proposed by the Parking and Bus Lane Tribunal for Scotland to the parking adjudicators' regime. If any changes to this regime are required, then an SSI will be made to cover all local authorities who have DPE at the same time.

Request from the Rural Economy and Connectivity Committee for Information

11. Following the laying of Highland Council's SSIs for DPE powers in September, there was a substantive discussion around these Orders (negative procedure) at the Rural Economy and Connectivity Committee on 28 September 2016. The discussion was essentially about the DPE regime in the generality, rather than Highland Council's DPE regulations.

12. The discussion primarily revolved around how much revenue is being generated from DPE by the relevant local authorities, how it is accounted for and what it is being used for. There was some discussion among the members about potential difficulties in obtaining the information the Committee is interested in from local authorities, which led to some general

discussion about potential annulment of the regulations then at hand or future regulations. The Committee wrote to the Scottish Government on 3 October 2016 requesting specific information about the number of PCNs issued, income generated by the different DPE operations and how the money is being used. We wrote to the Committee on 17 October 2016, in which we advised that we would provide a detailed report that provided a response to its specific questions. A report was issued to the Committee on 28 November 2016.

13. Due to the Committee's request and its decision not to consider further parking regulation SSIs laid in the Parliament before it received a response to their questions, East Lothian Council's draft SSIs will now be made in December rather than November 2016. This has caused some concern politically as the Deputy Chief Executive of East Lothian Council was expecting the DPE regime to commence before the end of the year. However, Transport Scotland will endeavour to meet the December deadline for making and laying the SSIs.

Business and Regulatory Impact Assessment

14. As the draft regulations relate to the enforcement of existing parking restrictions and do not therefore constitute an additional burden on business, a Business and Regulatory Impact Assessment is not required. The enforcement costs incurred by East Lothian Council are expected to be absorbed by income from parking penalties.

Financial Effects

15. These SSIs will have no financial effect on the Scottish Government.

Roads Policy Team

Transport Scotland
29 November 2016