

BUS LANE ADJUDICATION JOINT COMMITTEE

**To be held on Wednesday 21st November 2012 at 12.30pm
or the rise of the PATROL Adjudication Joint Committee
At The St Albans Centre, Leigh Place, Baldwins Gardens,
Holborn, London, UK EC1N 7AB**

AGENDA

PART A

1. URGENT BUSINESS

To consider any items which the Chair has agreed to have submitted as urgent.

2. ACCESS TO INFORMATION ACT

To consider any appeals from the public against refusal to allow inspection of background documents and/or the inclusion of items in the confidential part of the agenda.

3. DECLARATIONS OF PECUNIARY / NON-PECUNIARY INTERESTS

To allow Members an opportunity to [a] declare personal or prejudicial interests in any items which appear on this agenda; and [b] record any items from which they are precluded from voting as a result of Council Tax/Council rent arrears; and [c] the existence and nature of any party whipping arrangements in respect of any item to be considered at this meeting.

Members with a personal interest should declare that interest at the start of the item under consideration. If members also have a prejudicial interest they should withdraw from the meeting during the consideration of the item.

4. MINUTES OF THE BUS LANE ADJUDICATION SERVICE JOINT COMMITTEE MEETING HELD 25TH SEPTEMBER 2012

To note the minutes of the PATROL Adjudication Joint Committee Executive Sub Committee meeting held 25th September 2012

[Enclosed]

5. TRIBUNAL GENERAL PROGRESS AND SERVICE STANDARDS

To provide general information in respect of the tribunal's initiatives and standards.

[Enclosed]

6. DEPARTMENT FOR TRANSPORT CONSULTATION ON ROAD USER CHARGING ENFORCEMENT REGULATIONS

To provide information regarding the current consultation process.

[Enclosed]

7. EXTERNAL AUDIT REPORT 2011/12

To note the external audit report for the year ending March 2012.

[Enclosed]

8. BUDGET MONITORING REPORT

To provide budget monitoring information for 2012/13

[Enclosed]

9. MEMORANDUM OF UNDERSTANDING BETWEEN THE ADJUDICATORS AND THE JOINT COMMITTEES

To approve the Memorandum of Understanding between the Adjudicators and the Joint Committees.

[Enclosed]

10. APPOINTMENT OF CHESHIRE EAST COUNCIL AS THE NEW LEAD AUTHORITY

To approve Cheshire East Council as the new Lead Authority with effect from 1st April 2013

[Enclosed]

11. TERMS AND CONDITIONS – PART TIME ADJUDICATORS

To note and approve the review of the terms and conditions for part-time adjudicators

[Enclosed]

12. DATE OF NEXT MEETINGS:

TUESDAY 29th January 2013, Birmingham

TUESDAY 25TH June 2013, Birmingham

AGENDA ISSUED: 12TH NOVEMBER 2012

**LOUISE HUTCHINSON, HEAD OF SERVICE
PATROL ADJUDICATION JOINT COMMITTEE, BARLOW HOUSE,
MINSHULL STREET, MANCHESTER M1 3DZ:
Telephone 0161 242 5290**

Minutes of a meeting of the Bus Lane Adjudication Service Joint Committee held on 25 September 2012 at the Warwickshire County Cricket Club, Edgbaston, Birmingham.

Present:

Councillor Tony Page	Reading Borough Council (Chair)
Councillor Jamie Macrae	Cheshire East Council
Councillor Harvey Siggs	Somerset County Council

Also Present:

Louise Hutchinson	PATROL
Kelly Cornell	PATROL
Miles Wallace	PATROL
Andrew Barfoot	Traffic Penalty Tribunal
Caroline Sheppard	Traffic Penalty Tribunal
Chris Shepherd	Manchester City Council
Graham Addicott	Chair Advisory Board
Kevin Melling	Cheshire East Council
Brian Reed	Cheshire East Council

BLAS/12/24 Minutes of the Bus Lane Adjudication Service Joint Committee

Decision

To approve the minutes of the Bus Lane Adjudication Service Joint Committee held on 26 June 2012.

BLAS/12/25 Memorandum of Understanding

The Lead Officer gave a brief update on the production of the Memorandum of Understanding between the Adjudicators and the Joint Committee which will be reported in full to the November 2012 meeting.

Decision

To note the production of the Memorandum of Understanding.

BLAS/12/26 Part-time Adjudicator Recruitment

A report informing the Joint Committee of the planned recruitment exercise for appointment of part-time adjudicators was submitted.

Decision

To note the planned recruitment exercise.

BLAS/EXE/12/27 Tribunal General Progress and Service Standards

A report was submitted which detailed the progress in respect of the take up of civil bus lane enforcement powers by Councils in England (outside London) and information in relation to general progress and service standards.

The Committee noted that during the first quarter of 2012/13, Three new councils had joined: Somerset County Council, Plymouth City Council and Leicester City Council.

Decision

1. To note the information provided in the report in respect of the current take up of civil enforcement of bus lane powers.
2. To note the information in relation to appeals activity.
3. To note the information in relation to service standards.

BLAS/12/28 New Host Authority Arrangements

It was reported that the Chair and the Lead Officer had attended a meeting of the Cabinet for Cheshire East Council where the decision was made that Cheshire East Council would become the host authority for PATROL.

Councillor Macrae, the representative from Cheshire East Council read out the Cabinet's decision as follows:

“2.1 To agree to undertake the role of Host Authority to the PATROL Adjudication Joint Committee and Bus Lane Adjudication Service Joint Committee subject to all legal and financial due diligence being satisfactorily completed in accordance with the proposed timetable. This decision will be communicated to the PATROL Adjudication Joint Committee at their next meeting.

2.2 Subject to 2.1 above to delegate authority to the Head of Highways, in consultation with and subject to the approval of the Borough Solicitor and the S151 Officer and the appropriate Portfolio Holder, to develop and implement a detailed activity schedule that will anticipate the commencement date for Cheshire East Council becoming the Host Authority on 1 January 2013.

2.3 To note that by becoming the Host Authority, this will trigger the automatic application of the TUPE Regulations which will affect a transfer of

24 employees (Chief Adjudicator and 23 support staff) from Manchester City Council to Cheshire East Council”.

The Lead Officer explained that she should would be working very closing with Kevin Melling and his colleagues from Cheshire East Council in relation to HR, democratic services and property services. The priority for the service was to confirm the location of the offices and to arrange for the staff to be TUPE over to Cheshire East.

The members of PATROL expressed their appreciation to the Lead Officer and the staff and colleagues for the work that has been done to ensure a smooth handover.

A meeting would be convened on 21 November 2012 to formalise the new appointment of the Host Authority.

BLAS/12/29 Adjudication for Road User Charging Schemes in England

A report to inform the Committee of the Government’s plans to introduce The Road User Charging Schemes (Enforcement) (England) Regulations was submitted. The report also sought approval to progress discussions with the Department for Transport and Highway Agency on the provision of adjudication arrangements.

The Head of Service explained that she would liaise with the new host Authority in order to engage with the Highways Agency.

Decision

1. To note the report.
2. To approve the Chief Adjudicator and Head of Service progressing discussions with the Department of Transport and Highways Agency on the provision of adjudication arrangements and report to the Joint Committee at a later date.

BLAS/12/30 Equality Policy Statement

A report which submitted the Equality Policy Statement for approval was submitted.

Decision

To approve the Bus Lane Adjudication Service Joint Committee Equality Policy Statement.

BLAS/12/31 Final Annual Accounts 2011/12

The Lead Officer informed the Committee that the final annual accounts for 2011/12 had not yet been received from the Auditors, BDO. A report will be presented to the November meeting.

BLAS/12/32 Appointment of External Auditors 2012/13

Decision

To note the appointment of BDO LLP as external auditor for five years with effect from 1 September 2012.

BLAS/12/33 Risk Register

A report which presented the most recent review of the risk register was submitted. The Lead Officer provided an overview of IT security arrangements.

Decision

To note the report.

BLAS/12/34 Budget Monitoring 2012/13

A report presenting the expenditure monitoring information in respect of the Revenue Account for 2012/13 was submitted. Based on the first quarter information, it was forecast that there would be an underachievement of income. This will be monitored and a further report will be presented to the November 2012 meeting

Decision

1. To note the income and expenditure position at 30 June 2012.
2. To note that a further report will be presented to the November 2012 meeting.

PATROL/EXE/12/15 Date of next meeting

Bus Lane Adjudication Service Joint Committee – 21 November 2012
Bus Lane Adjudication Service Joint Committee – 29 January 2013

REPORT FOR INFORMATION

SUBJECT: General Progress and Service Standards

REPORT OF: The Lead Officer on behalf of the Advisory Board

PURPOSE OF REPORT

To report to the Committee on progress in respect of: (a) the take up of civil bus lane enforcement powers by Councils in England (outside London) and Wales and information in relation to general progress and service standards.

RECOMMENDATIONS

It is recommended that the Joint Committee:

- (i) Notes the information provided in the report in respect of the current take up of civil enforcement of bus lanes powers.
- (ii) Notes the information in relation to appeals activity
- (iii) Notes the information in relation to service standards

FINANCIAL CONSEQUENCES

The budget setting process includes forecasting of anticipated appeals activity.

CONTACT OFFICER

Louise Hutchinson, Joint Committee Services, PATROL, Barlow House, Minshull Street, Manchester, M1 3DZ. Tel: 0161 242 5270

1. BACKGROUND

The statistical report provides information in relation to the period April 2012 to September 2012

2. RECOMMENDATIONS

It is recommended that the Joint Committee:

- (i) Notes the information provided in the report in respect of the current take up of civil enforcement of bus lanes powers.
- (ii) Notes the information in relation to appeals activity.
- (iii) Notes the information in relation to service standards.

3. COUNCILS IN THE SCHEME

During the second quarter of 2012/13, no further councils have joined the scheme.

4. CASE CLOSURE

Appealing to the Traffic Penalty Tribunal is a judicial process and, as such, it is not appropriate to set out rigid timescales for deciding appeals, however the Tribunal's objective is "To provide a Tribunal service which is user focused, efficient, timely, helpful and readily accessible". In June 2007 the Joint Committee approved the following targets:

Personal Hearings

60% of cases to be offered a personal hearing date within 8 weeks of receipt of the Notice of Appeal

90% of cases to be offered a personal hearing date within 12 weeks of receipt of the Notice of Appeal

Postal Decisions

80% of postal decisions to be made within 7 weeks of receipt of the Notice of Appeal

The reports on case closure include all cases which were registered during April to September 2012 and have been decided (data is also included for the year ending 31 March 2012 for comparison). This data will include cases that have been delayed for the following reasons.

Requests from parties to the appeal:

- Additional time to submit evidence
- Requests for adjournment of hearings
- Inconvenience of hearing time / venue
- Availability of witnesses

Adjudicators may require:

- Adjournments for additional evidence or submissions
- A personal hearing supplemented by a later telephone hearing to consider additional evidence
- Consolidation of cases which relate to a common issue
- Holding cases pending a particular Decision of the Traffic Penalty Tribunal or High Court

The following tables provide case closure times in respect of bus lane appeals in England.

Postal Cases (decided without a hearing)

Measure	April to March 2012	April to September 2012
Average number of weeks between registration of appeal and decision issued	6.81 weeks	4.78 weeks
Cases with less than 7 weeks between registration and decision (postal target)	70.79%	86.68%
Cases with less than 12 weeks between registration and decision	82.49%	98.63%

Personal Cases (Face to Face Hearings)

Measure	April to March 2012	April to September 2012
Average number of weeks between registration of appeal and decision issued	12.87weeks	11.90 weeks
Cases with less than 8 weeks between registration and decision (personal target)	17.73%	22.41%
Cases with less than 12 weeks between registration and decision (personal target)	54.61%	62.07%

Telephone Cases (Telephone Hearing)

Measure	April to March 2012	April to September 2012
Average number of weeks between registration of appeal and decision issued	8.48 weeks	7.50 weeks
Cases with less than 8 weeks between registration and decision (personal target)	66.04%	73.68%
Cases with less than 12 weeks between registration and decision (personal target)	82.84%	90.35%

REPORT FOR INFORMATION

**SUBJECT: DEPARTMENT FOR TRANSPORT CONSULTATION ON
ROAD USER CHARGING ENFORCEMENT
REGULATIONS**

REPORT OF: The Lead Officer on behalf of the Advisory Board

PURPOSE OF REPORT

To inform the Joint Committee of the consultation on Road User Charging Enforcement Regulations.

RECOMMENDATIONS

1. To note the Department for Transport consultation on Road User Charging Enforcement Regulations (Appendix).

FINANCIAL CONSEQUENCES

None at this stage.

CONTACT OFFICERS

Louise Hutchinson, PATROL Headquarters, Barlow House, Minshull Street,
Manchester M1 3DZ

1. BACKGROUND

- 1.1 The Department for Transport is seeking views on a proposal to provide for the fair and effective enforcement of road user charging schemes made in accordance with the Transport Act 2000 (Appendix 1).
- 1.2 The provisions contained in the enclosed proposal would be put into effect by regulations made under Part III of the Transport Act 2000. The regulations will allow enforcement actions such as the issuing of penalty charge notices, the examination of vehicles and equipment and immobilization, removal, storage and disposal of vehicles.
- 1.3 Provisions will also cover arrangements for pursuing debt through the courts and adjudication
- 1.4 It is forecast that these regulations will initially be enforced on the Dartford Bridge however it is anticipated that there will be wider application of these powers with time.
- 1.5 The Department considers the consultation of interest specifically to local transport authorities. The closing date for responses is 28 January 2013

RECOMMENDATIONS

1. To note the Department for Transport consultation on Road User Charging Enforcement Regulations (Appendix 1).

Bus Lane Adjudication Service Joint Committee
21st November 2012
Item 6 Appendix 1

Department for
Transport

The Road User Charging Scheme (Enforcement)(England) Regulations

Consultation Document (DfT-2012-18)

November 2012

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Department for Transport
Great Minster House
33 Horseferry Road
London SW1P 4DR
Telephone 0300 330 3000
Website www.dft.gov.uk
General email enquiries FAX9643@dft.gsi.gov.uk

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Contents

Executive Summary	4
What the consultation is about	4
How to respond	5
Freedom of Information	5
The proposal	7
1. How the Regulations work.....	7
2. Enforcement of Charging Schemes.....	8
3. Imposition & Payment of Penalty Charges	8
4. Adjudication, Evidence and Hearings.....	9
5. Powers exercised in Respect of Vehicles.....	10
6. Road User Charging Schemes.....	10
7. The Impact of the Regulations.....	11
Consultation Questions	12
What will happen next	13
Annex A Draft Regulations.....	14
Annex B Consultation Principles	14
Annex C List of those consulted.....	35

Executive Summary

What the consultation is about

The Future of Transport, published in July 2004, set out a long-term strategy for a modern, efficient and sustainable transport system backed up by sustained high levels of investment over 15 years. Effective management of the road network is a key part of this. The introduction of free-flow charging, to replace schemes operated with barriers and booths, is one way of managing congestion on the road network.

This document seeks views on a proposal to provide for the fair and effective enforcement of road user charging schemes in accordance with the Transport Act 2000 (“TA 2000”). The provisions contained in the proposal will be implemented by regulations made under the TA 2000, the Road User Charging Schemes (Enforcement) (England) Regulations (“Regulations”).

The Transport Act 2000 provides powers for ‘the appropriate national authority’ (in England, the Secretary of State) and the Lord Chancellor to make regulations providing a national legislative framework for the civil enforcement of a charging scheme. The regulations will allow enforcement actions such as the issuing of penalty charge notices, the examination of vehicles and equipment and the immobilisation, removal, storage and disposal of vehicles. Provisions will also cover arrangements for pursuing debt through the courts and adjudication.

A copy of the draft Regulations is set out in Annex A.

How to respond

The consultation period will run from 5 November 2012 until 28 January 2013. We consider that the consultation is of interest specifically to local transport authorities.

Please ensure that your response reaches us before the closing date. If you would like further copies of this consultation document, it can be found at www.dft.gov.uk/consultations/dft-2012-18

You are invited to respond using the online questionnaire.

Alternatively consultation responses can be emailed directly to ERC@dft.gsi.gov.uk.

If you require alternative formats (Braille, audio CD, etc) please contact Karen.Wilkinson@dft.gsi.gov.uk

When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

A list of those consulted is attached at Annex C. If you have any suggestions of others who may wish to be involved in this process please contact us.

Freedom of Information

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance

with the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004.

If you want information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the Data Protection Act (DPA) and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

The proposal

The Department is seeking views on a proposal to enable charging authorities (as defined in Part III TA 2000) to take civil enforcement action against drivers who fail to pay a road user charge under a scheme established under the Transport Act 2000. The provisions contained in the proposal would be put into effect by regulations made under Part III TA 2000.

The proposals relate only to the enforcement of road user charging schemes made by traffic authorities under Part III TA 2000*. They would not apply to the enforcement of road tolls levied under any other legislation.

1. How the Regulations work

1.1 It is important to appreciate that how the civil enforcement of road user charges will operate in a particular case is likely to depend on the way in which a particular traffic authority wishes to operate its charging scheme. Traffic authorities wanting to introduce a road user charging scheme must do so by making a Charging Scheme Order (“CSO”) under Part III TA 2000.

1.2 Sections 171 to 172 of TA2000 set out the basic elements which must be included in a CSO – the roads to be charged, how the charges are defined, and the classes of motor vehicles that will be subject to a charge, the levels of road user charge and the duration of the scheme. These elements are for the traffic authority to determine.

* The Regulations will also apply to tolls to be levied on the yet to be built Mersey Gateway Bridge by virtue of Article 46 of the River Mersey (Mersey Gateway Bridge) Order 2011 (S.I. 2011/41)

2. Enforcement of Free-Flow Charging Schemes

2.1 One of the largest challenges in operating a barrier free or 'free-flow' operated road user charging scheme is gaining a high level of payment compliance when there is nothing to stop a vehicle and oblige road users to pay the road user charge at the booth. Without both physical barriers and the provision to enforce, there would be little to ensure that road users complied with the requirements of a charging scheme. Users would soon become aware that there was no enforcement for non-payment of the charges, and compliance would reduce rapidly.

2.2 Enforcement provisions are considered necessary in order to ensure that road users continue to pay the required road user charge under a barrier-free operation. Provision to enforce against non-payers would encourage road users to be compliant, and active enforcement would serve as a mechanism for increasing awareness of the requirements of the road user charging scheme.

2.3 Once the Regulations come into force, the charging authority, if it thought appropriate, would be able to include enforcement provisions in its CSO, drawing on any or all of the means of civil enforcement provided by the Regulations.

3. Imposition & Payment of Penalty Charges

3.1 Where a penalty charge becomes payable under a charging scheme, it is proposed that a charging authority may serve a penalty charge notice. The level of the penalty charge would be determined by the charging authority but could be no higher than those specified in the Regulations.

3.2 It is proposed that the maximum rates of penalty charges should be:

- a) £60 where the penalty charge is paid in full within 14 days beginning with the day after the day on which the penalty charge notice was served;
- b) £120 where the penalty charge notice is paid in full after the 14 days but before a charge certificate has been served; and
- c) £180 where the penalty charge is paid in full after a charge certificate has been served.

3.3 The proposed maximum rates are in line with the current penalty charge rates for the London Congestion Charging Scheme.

3.4 A charging authority would specify within the CSO how the penalty charge rates will be communicated to road users. Where a penalty remains unpaid after a specified period the charging authority may issue a charge certificate. If the penalty continues to remain unpaid the charging authority would be permitted to recover the amount due through the county courts, including the Traffic Enforcement Centre at Northampton County Court.

4. Adjudication, Evidence and Hearings

4.1 The TA 2000 permits arrangements for the adjudication and enforcement of penalty charges to be specified in the Regulations with non-payment of a road user charge to be dealt with as a civil enforcement matter rather than as a criminal offence. It is proposed that outstanding charges and penalty charges will be recoverable as a civil debt.

4.2 To ensure consistency in the adjudication of appeals against the imposition of a penalty charge, it is proposed that all charging authorities

will use the same adjudication body, the Traffic and Penalty Tribunal Service†.

5. Powers exercised in Respect of Vehicles

5.1 Once the Regulations come into force, the charging authority, if it thought appropriate, would be able to include enforcement provisions within its CSO to allow for examination and entry of a vehicle, and to immobilise, remove, store or dispose of vehicles where there are three or more outstanding penalty charges.

5.2 The Regulations also specify the circumstances in which a registered keeper or keeper of a vehicle, that has been immobilised, removed, stored or disposed of, may make representations against such actions. It is proposed that the keeper or registered keeper must pay all outstanding charges before being permitted to make representations. The registered keeper or keeper would have 28 days to make such representations directly to the charging authority but those representations may be on only the grounds specified in the Regulations. Where the charging authority does not accept that a ground has been satisfied, the registered keeper or keeper would then have the option to appeal to an adjudicator against the charging authority's decision.

6. Road User Charging Schemes

6.1 The Highways Agency is leading on a project to introduce free-flow charging at the Dartford-Thurrock river crossing, which would improve traffic flow by removing the barriers and thereby remove the requirement for drivers to stop and pay the road user charge at the booths. Delivery is scheduled for October 2014, which means that Dartford would be the

† <http://www.trafficpenaltytribunal.gov.uk/site/index.php>

first TA2000 charging scheme to include enforcement provisions in its CSO.

6.2 A copy of the full public consultation on the Dartford Crossing CSO can be found at <http://www.highways.gov.uk/dartfordcsoconsultation>. However, it is important to note that the provisions within the Regulations will be available for any authority that operates a road user charging scheme under the Transport Act 2000.

7. The Impact of the Regulations

7.1 The Regulations would not lead directly to any costs or savings for business, public or civil organisations, regulators or consumers. The impact would only result when an individual charging authority draws on the provisions contained in the Regulations, by creating a new or varying an existing CSO. Therefore an Impact Assessment on the Regulations is not required. However, the Impact Assessment for 'Free-Flow' Road User Charging at the Dartford-Thurrock River Crossing will clearly illustrate the impacts of the Regulations if they were drawn upon by other road user charging schemes. A copy of the Impact Assessment can be found at <http://www.highways.gov.uk/dartfordcsoconsultation>.

Consultation Questions

You are invited to consider the following questions when responding to the consultation:

Q1. Do you agree, in principle, with this proposal to enable enforcement against drivers who do not pay the road user charge, for schemes that operate under the Transport Act 2000?

If not, could you say why?

Q2. Do the proposals to be put into effect by the Regulations provide a charging authority with sufficient powers to enforce a road user charging scheme?

If not, could you say why?

Q3. The proposals will enable a charging authority to immobilise, store or dispose of a vehicle when there are three or more outstanding penalty charges. Is this an appropriate number of outstanding charges before vehicle enforcement can take place?

If not, could you say why?

Q4. Do you agree with the proposed maximum penalty charge levels to be put into effect by the Regulations?

If not, could you say why?

Q5. Do the proposals to be put into effect by the Regulations provide a registered keeper or keeper with sufficient powers to appeal to an adjudicator against a charging authority's decision?

If not, could you say why?

Q6. A registered keeper or keeper must pay all charges before being permitted to make representation (or appealing) against the immobilisation, removal or disposal of the vehicle. Should the payment of a lesser amount be permitted to entitle the person to make representations?

If so, please indicate an adequate level of payment. (e.g. 50% of the outstanding charges)

Q7. Do you foresee any unintended consequences for traffic authorities of the proposals to be put into effect by the Regulations?

Please outline these consequences in more detail.

Please provide as much supporting evidence as possible with each of your responses to the above questions.

What will happen next

A summary of responses, including the next steps, will be published on the Departments website www.dft.gov.uk. Paper copies will be available if required.

Annex A Draft Regulations

STATUTORY INSTRUMENTS

2013 No. 0000

ROAD TRAFFIC, ENGLAND

The Road User Charging Schemes (Enforcement) (England) Regulations

<i>Made</i> - - - -	2012
<i>Laid before Parliament</i>	2012
<i>Coming into force</i> - -	2012

The Secretary of State for Transport, in exercise of the powers conferred by sections 163(2) and (3), 173(1) to (3), 174(1), (2) and (5), 175(1) and 197(1) and (5) of the Transport Act 2000(‡) and the Lord Chancellor, in exercise of the powers conferred by sections 173(4), 195(1)(b) to (d) and (2) and 197(1) and (5) of that Act make the following Regulations.

PART 1

Preliminary

Citation, commencement and application

1.—(1) These Regulations may be cited as the Road User Charging Schemes (Enforcement) (England) Regulations and come into force on .

(2) These Regulations do not apply in Greater London.

Interpretation

2. In these Regulations—

“hiring agreement” and “vehicle-hire firm” have the same meaning as in section 66 Road Traffic Offenders Act 1988(§);

“vehicle” means motor vehicle within the meaning given by section 185(1) of the Road Traffic Act 1988(**) excluding those vehicles described in section 189 of that Act as vehicles which are not to be treated as motor vehicles for the purposes of that Act.

(‡) 2000 c.38
(§) 1988 c.53

“registered keeper” means the person registered as the owner of a vehicle under section 21 of the Vehicle Excise and Registration Act 1994(††);

“Registration and Licensing Regulations” means the Road Vehicles (Registration and Licensing) Regulations 2002(‡‡)

“relevant vehicle” means a vehicle that, having used a road subject to a charging scheme, incurs a penalty charge under the charging scheme; and

“relevant time” means the time when a relevant vehicle used a road subject to a charging scheme and that use resulted in a penalty charge being incurred under the charging scheme.

PART 2

Penalty Charge

Imposition of penalty charge

3.—(1) A charging scheme may provide for the imposition of a penalty charge in respect of a vehicle where—

- (a) the vehicle has incurred a charge under the charging scheme; and
- (b) such charge has not been paid in full in accordance with the charging scheme.

(2) If a charging scheme so provides, a penalty charge shall be payable.

(3) If a charging scheme provides for the payment of a penalty charge, it shall specify whether that penalty charge is to be payable in addition to the charge payable under the charging scheme or instead of such charge.

Setting the rate of penalty charge

4.—(1) A charging scheme shall, subject to paragraph (2)—

- (a) specify the rates of penalty charges imposed; or
- (b) specify the manner in which the charging authority shall communicate such rates to users of the road or roads subject to the charging scheme.

(2) The maximum rates of penalty charges to be imposed are—

- (a) £60 where the penalty charge is paid in full within fourteen days beginning with the day after the day on which the penalty charge notice was served;
- (b) £120 where the penalty charge is paid in full after the expiry of such fourteen day period but before a charge certificate has been served; and
- (c) £180 where the penalty charge is paid in full after a charge certificate has been served in accordance with regulation 11.

Liability for penalty charge

5.—(1) Except in the circumstances described in paragraphs (2) to (5), where a relevant vehicle is registered under the Vehicle Excise and Registration Act 1994, the penalty charge shall be paid by the registered keeper.

(2) Where before the relevant time the registered keeper has notified the Secretary of State in accordance with regulation 21, 22, 23, 24 or 25 of the Registration and Licensing Regulations that there has been a change of registered keeper of the relevant vehicle, the penalty charge shall be paid by the keeper of the relevant vehicle at the relevant time.

(**) 1988 c.52
(††) 1994 c.22
(‡‡) S.I.2002/2742.

(3) Where at the relevant time the relevant vehicle was kept by a person who was a vehicle trader as defined by regulation 20(6) of the Registration and Licensing Regulations and that person was not the registered keeper, the penalty charge shall be paid by that person.

(4) Where at the relevant time—

- (a) the registered keeper of the relevant vehicle was a vehicle-hire firm;
- (b) the relevant vehicle was hired from such registered keeper under a vehicle hire agreement; and
- (c) the person who hired the relevant vehicle signed a document accepting liability for any penalty charges incurred under a charging scheme during the term of the vehicle hire agreement,

the penalty charge shall be paid by the person who hired the vehicle.

(5) Where at the relevant time a person was using the relevant vehicle without the consent of the registered keeper or keeper, the penalty charge shall be paid by the person who used without consent the relevant vehicle at the relevant time.

(6) Where a relevant vehicle is not registered under the Vehicle Excise and Registration Act 1994, the penalty charge shall be paid by the user of the relevant vehicle at the relevant time.

PART 3

Recovery of Penalty Charge

Penalty charge notice

6.—(1) Where a penalty charge becomes payable under a charging scheme, a charging authority may serve a notice (“a penalty charge notice”) on the person who, in accordance with regulation 5, is liable to pay the penalty charge.

(2) A penalty charge notice must state—

- (a) the amount of the penalty charge, subject to regulation 4(2), that is payable—
 - (i) where the penalty charge is paid in full within fourteen days beginning with the day after the day on which the penalty charge notice was served;
 - (ii) after the expiry of such fourteen day period but before a charge certificate has been served; and
 - (iii) after a charge certificate has been served.
- (b) the date and time, according to the charging authority, when the vehicle was used, on a road designated by the charging scheme as a road in respect of which a charge is payable, so as to cause the penalty charge to become payable;
- (c) the grounds on which the charging authority believes that a penalty charge is payable with respect to that vehicle;
- (d) the time and manner, in accordance with the charging scheme, in which the penalty charge must be paid;
- (e) that the person on whom the penalty charge notice is served may be entitled to make representations under regulation 7; and
- (f) the effect of service of a charge certificate under regulation 11.

Representations against a penalty charge notice

7.—(1) Where it appears to the person on whom the penalty charge notice is served (“the recipient”) that one or more grounds mentioned in paragraph (3) are satisfied, the recipient may make representations in writing to that effect to the charging authority.

(2) The charging authority may disregard any such representations which it receives after the end of the period of 28 days beginning with the date on which the penalty charge notice was served.

(3) The grounds are that—

- (a) the recipient is not the person who, in accordance with regulation 5, is liable to pay the penalty charge;
 - (b) the charge incurred under the charging scheme, being a charge referred to in regulation 3(1)(a), was paid in accordance with the charging scheme;
 - (c) no penalty charge is payable under the charging scheme;
 - (d) at the relevant time the relevant vehicle was being used by a person without the consent of the person who, in accordance with regulation 5, is liable to pay the penalty charge; or
 - (e) the penalty charge exceeds the amount applicable, under the charging scheme, in the circumstances of the case.
- (4) Where representations are made in accordance with paragraph (3)(a) or (d), such representations must include, if known, the name and address of the person who, in accordance with regulation 5, is liable to pay the penalty charge.
- (5) It shall be the duty of a charging authority to whom representations are made under this regulation to, within 56 days of receipt of the representations—
- (a) consider them and any supporting evidence provided; and
 - (b) serve, on the person making such representations, a notice of its decision, including reasons, as to whether or not it accepts that one or more of the grounds has been established.

Acceptance of representations and cancellation of penalty charge notice

- 8.—(1) Where representations are made under regulation 7 and the charging authority accepts that a ground has been established it shall, within 28 days of receipt of the representations—
- (a) cancel the penalty charge notice; and
 - (b) state in the notice served under regulation 7(5)(b) that the penalty charge notice has been cancelled.
- (2) The cancellation of a penalty charge notice under this regulation shall not prevent the charging authority from serving, on the same person or another person, a penalty charge notice in respect of the use of the relevant vehicle at the relevant time.

Rejection of representations against penalty charge notice

- 9.—(1) Where representations are made under regulation 7 and the charging authority does not accept that a ground mentioned in regulation 7(3) has been established, the notice served under regulation 7(5)(b) (“the notice of rejection”) must—
- (a) state that the charging authority rejects the representations and accordingly the penalty charge remains payable;
 - (b) state that a charge certificate may be served under regulation 11 unless before the end of the period of 28 days beginning with the date of service of the notice of rejection—
 - (i) the penalty charge is paid; or
 - (ii) the person on whom the notice is served appeals to an adjudicator against the charging authority’s decision;
 - (c) state the amount, specified in accordance with regulation 4(1), of the reduced penalty charge if it is paid in full within fourteen days beginning with the date of service of the notice of rejection;
 - (d) state that the person on whom the notice is served has a right of appeal to an adjudicator;
 - (e) indicate the nature of an adjudicator’s power to award costs against any person appealing to him; and
 - (f) describe in general terms the form and manner in which an appeal to an adjudicator must be made.
- (2) A notice of rejection may contain such other information as the charging authority considers appropriate.

Adjudication by an adjudicator

10.—(1) Where a charging authority serves notice under regulation 7(5)(b) that it does not accept that a ground mentioned in regulation 7(3) on which representations were made has been established, the person making those representations may appeal to an adjudicator against the charging authority's decision before—

- (a) the end of the period of 28 days beginning with the date of service of that notice; or
- (b) such longer period as an adjudicator may allow, following consultation with the charging authority.

(2) An adjudicator may allow a longer period for an appeal under paragraph (1)(b) whether or not the period specified in paragraph (1)(a) has already expired.

(3) On an appeal under this regulation, the adjudicator shall consider the representations in question and any additional representations which are made by the appellant on any of the grounds mentioned in regulation 7(3) and may give the charging authority concerned such directions as the adjudicator considers appropriate.

(4) It shall be the duty of a charging authority to whom a direction is given under paragraph (3) to comply with the direction.

Charge certificates

11.—(1) Where a penalty charge notice is served on a person and the penalty charge to which it relates is not paid before the end of the relevant period specified in paragraph (3), the charging authority may serve on that person a document ("a charge certificate") to the effect that the penalty charge is increased to the sum, specified in the charging scheme, as applicable where a penalty charge is paid in full after a charge certificate has been served.

(2) A charging authority which has served a charge certificate on a person may cancel the charge certificate and serve or cancel such further charge certificates as it thinks fit.

(3) The relevant period referred to in paragraph (1) is the period of 28 days beginning—

- (a) where no representations are made under regulation 7, with the date on which the penalty charge notice is served;
- (b) where—
 - (i) such representations are made;
 - (ii) a notice of rejection, under regulation 9, is served by the charging authority; and
 - (iii) no appeal against the notice of rejection is made,with the date on which the notice of rejection is served; or
- (c) where there has been an unsuccessful appeal against a notice of rejection, with the date on which notice of the adjudicator's decision is served on the appellant.

(4) Where an appeal against a notice of rejection is made but is withdrawn before the adjudicator gives notice of his decision, the relevant period is the period of 14 days beginning with the date on which the appeal is withdrawn.

Enforcement of charge certificate

12. Where a charge certificate has been served on any person and the increased penalty charge provided for in the certificate and, if applicable, the related charge referred to in regulation 3(1)(a) is not paid before the end of the period of 14 days beginning with the date on which the certificate is served, the charging authority may recover the increased penalty charge and, if applicable, the related charge referred to in regulation 3(1)(a) as if it or they, as the case may be, were payable under a county court order.

Enforcement by execution

13.—(1) Subject to paragraph (2)—

- (a) an unpaid penalty charge and, if applicable, the related charge referred to in regulation 3(1)(a) recoverable in accordance with regulation 12 as if it were payable under a county court order; and
- (b) a sum to be paid by a person (other than a charging authority) under an adjudication of an adjudicator which is recoverable in accordance with regulation 28 as if it were payable under a county court order,

shall be treated for the purposes of enforcement by execution as if they were specified debts in the Enforcement of Road Traffic Debts Order 1993(§§) (“the 1993 Order”).

(2) For the purposes of the enforcement by execution of an unpaid penalty charge and, if applicable, the charge referred to in paragraph (1)(a) or the enforcement by execution of the payment of a sum referred to in paragraph (1)(b)—

- (a) any reference in the 1993 Order to “the authority” shall be a reference to a charging authority; and
- (b) the reference in article 3(1) of the 1993 Order to “the time for serving a statutory declaration” shall be a reference to the period of 35 days beginning with the date on which a charge certificate is served under regulation 11(1).

PART 4

Powers in Respect of Vehicles

Examining vehicles

14.—(1) A charging scheme may provide for the charging authority to designate in writing a person or persons to be empowered to examine vehicles in accordance with paragraph (2).

(2) A person so designated may examine a vehicle to ascertain whether—

- (a) any document required by the charging scheme to be displayed while the vehicle is on a road designated by the charging scheme, is so displayed;
- (b) any equipment required by a charging scheme to be carried in or fitted to the vehicle while it is on such a road—
 - (i) is so carried or fitted;
 - (ii) is in proper working order;
 - (iii) has been interfered with, or its functioning has been interfered with, with intent to avoid payment of, or to avoid any person being identified as having failed to pay, a charge imposed by the charging scheme; or
- (c) any conditions relating to the use of such equipment are satisfied.

Entering vehicles

15.—(1) A charging scheme may provide for the charging authority to designate in writing a person or persons to be empowered to enter vehicles in accordance with paragraph (2).

(2) A person so designated may, in the presence of a constable, enter a vehicle where that person has reasonable grounds for suspecting that—

- (a) any equipment required by a charging scheme to be carried in or fitted to the vehicle while it is on a road designated by the charging scheme has been interfered with, or its functioning has been interfered with, with intent to avoid payment of a charge or to avoid any person being identified as having failed to pay a charge imposed by the charging scheme; or
- (b) the vehicle contains or is displaying a false document which has been made or used with intent to avoid payment of, or to avoid any person being identified as having failed to pay, such a charge.

Power of seizure

16.—(1) A charging scheme may provide for the charging authority to designate in writing a person or persons to be empowered to seize, in the presence of a constable, anything, if necessary by detaching it from a vehicle, and to retain it as evidence of the commission of an offence under section 173(5) or (6) of the Transport Act 2000.

Immobilisation, removal, storage and disposal of vehicles

17.—(1) A charging scheme may provide for the charging authority to designate in writing a person or persons to be empowered to immobilise, remove, store and dispose of vehicles in accordance with this regulation.

(2) A person so designated may, where the conditions in paragraph (3) are met and subject to the provisions of this regulation, do any one or more of the following—

- (a) fit an immobilisation device to the vehicle or move it, or arrange for it to be moved, to another place on the same road or another road and fit an immobilisation device to the vehicle in that other place;
- (b) remove the vehicle or arrange for its removal to a place of storage;
- (c) store or arrange for the storage of the vehicle until it is disposed of; or
- (d) dispose of or arrange for the disposal of the vehicle in accordance with paragraph (6).

(3) The conditions are that the person designated under paragraph (1) has reason to believe that—

- (a) there are three or more unpaid penalty charges with respect to the vehicle; and
- (b) in respect of each of the penalty charges either no representation against the penalty charge has been made under regulation 7 or a representation has been made but has been rejected under regulation 9 or a representation followed by an appeal to an adjudicator under regulation 10 has been made but this has resulted in the penalty charge remaining to be paid.

(4) When an immobilisation device is fixed to a vehicle in accordance with this regulation, the person fitting the device shall also fix to the vehicle a notice—

- (a) indicating that the device has been fixed to the vehicle and warning that no attempt should be made to drive the vehicle until it has been released from the device;
- (b) indicating the reason why the device has been fixed to the vehicle;
- (c) specifying the steps to be taken to secure its release; and
- (d) giving contact information (including a telephone number) which may be used in order to request that the vehicle be released from the immobilisation device under paragraph (5)

(5) A vehicle to which an immobilisation device has been fixed in accordance with this regulation shall be released from that device by a person designated under paragraph (1) to immobilise vehicles if—

- (a) the charging authority is requested to do so; and
- (b) the conditions in regulation 18(2) have been met.

(6) Subject to the provisions of this regulation, the person designated under paragraph (1) may dispose of or arrange for the disposal of the vehicle and any contents of the vehicle by selling them or dealing with them as scrap.

(7) A vehicle or its contents shall not be disposed of until—

- (a) the expiry of 28 days beginning with the date on which the vehicle was removed; and
- (b) either—
 - (i) in the event that the vehicle carries a United Kingdom registration mark, the name and address of the registered keeper has been ascertained from records kept under the Vehicle Excise and Registration Act 1994 and the registered keeper has failed to act in accordance with a notice complying with paragraph (8); or
 - (ii) in the event that the vehicle does not carry a United Kingdom registration mark, such steps as appear practicable to the person disposing of the vehicle and any contents have been taken to ascertain the name and address of the keeper and either—

- (aa) it has not been possible to ascertain the name and address of the keeper; or
- (bb) the keeper has failed to act in accordance with a notice complying with paragraph (8).

(8) A notice under paragraph (7)(b)(i) or (7)(b)(ii)(bb) shall be a notice addressed to the registered keeper or keeper respectively, which states—

- (a) the outstanding penalty charges and if applicable, the charge payable under the charging scheme, in respect of the vehicle;
- (b) the registration mark and make of the vehicle;
- (c) the place from which the vehicle was removed;
- (d) the conditions to be satisfied before the release from storage of the vehicle and any contents in accordance with regulation 18; and
- (e) that unless the vehicle and any contents are removed by the registered keeper before the expiry of 28 days beginning with the date on which the notice was served, the vehicle and any contents may be disposed of.

(9) Where a vehicle has been removed and stored, the person designated under paragraph (1) or a person authorised by such person may recover from the registered keeper of the vehicle at the time it was removed—

- (a) all charges and penalty charges under the charging scheme in respect of the vehicle; and
- (b) such charges as may be prescribed by the charging scheme—
 - (i) for its removal;
 - (ii) for each complete day or part of a day on which it has been stored;
 - (iii) for its release from storage; and
 - (iv) for its disposal.

Taking possession of a removed vehicle

18.—(1) A person (the applicant) may take possession of a vehicle and any contents which have been removed and stored on satisfaction of the conditions specified in paragraph (2).

(2) The conditions are that—

- (a) satisfactory and verifiable proof of the applicant's name and address is provided;
- (b) the name and address of the registered keeper of the vehicle are provided if the applicant is not the registered keeper but is seeking to take possession acting on the authority of the registered keeper;
- (c) the applicant's status as the registered keeper or as a person acting on the authority of the registered keeper is proved;
- (d) all charges and penalty charges under the charging scheme in respect of the vehicle which were outstanding at the time the vehicle was removed are paid to the charging authority; and
- (e) all charges in respect of the removal, storage or release from storage of the vehicle are paid.

Claim by the registered keeper or keeper after disposal of a vehicle

19.—(1) Before the end of the period of one year beginning with the date of disposal of the vehicle, a person (the claimant) may claim from the person who disposed of the vehicle a sum calculated in accordance with paragraph (3).

(2) On receipt of such a claim, the person who disposed of the vehicle shall, if satisfied that the claimant's status as the registered keeper or keeper of the vehicle at the time of its disposal is proved, pay such sum to the claimant.

(3) The sum payable under paragraph (1) shall be calculated by deducting from the proceeds of disposal the total of—

- (a) the sums specified in regulation 17(9)(a), (b)(i) and (b)(ii) that would have been payable in respect of the vehicle had the registered keeper taken possession of it under regulation 18 immediately before it was disposed of; and

- (b) any charge in respect of the disposal of the vehicle.

PART 5

Representations and Appeals in relation to Powers exercised in Respect of Vehicles

Persons to whom Part 5 applies

20.—(1) This Part of these Regulations applies to a person (in this Part referred to as a “relevant person”), being the registered keeper or keeper of a vehicle which has been immobilised, removed, stored or disposed of under these Regulations, who—

- (a) has paid all outstanding charges and penalty charges under the scheme in respect of the vehicle and all charges for its immobilisation, removal, storage and disposal;
- (b) having made a claim under regulation 19, receives any sum in respect of the vehicle; or
- (c) having made a claim under regulation 19, is informed that the proceeds of its disposal do not exceed the amount of the penalty charges and other charges payable, in accordance with that regulation, in respect of the vehicle.

Representations in respect of immobilisation, removal, storage or disposal

21.—(1) A relevant person shall, at the time of the happening of an event referred to in paragraph 20(1)(a) to (c), be informed by notice in writing by or on behalf of the charging authority, of the right to make representations under this regulation and the right of appeal under regulation 24.

(2) A relevant person may make representations in writing to the charging authority on one or more grounds mentioned in paragraph (3).

(3) The grounds are—

- (a) that in the particular circumstances of the case, the immobilisation, removal, storage or disposal was not authorised by the charging scheme;
- (b) that the charge, penalty charge or charge for the immobilisation, removal or storage of the vehicle paid to secure the release of the vehicle exceeded the amount applicable in the circumstances of the case;
- (c) in a case where the vehicle was removed, that—
 - (i) all outstanding penalty charges were incurred before the registered keeper or keeper, as the case may be, of the vehicle at the time of its removal had become the registered keeper or keeper of the vehicle;
- (d) that the relevant person is a vehicle-hire firm and—
 - (i) the vehicle in question was, at the time the outstanding penalty charges were incurred, hired from that firm under a hiring agreement; and
 - (ii) the person hiring it had signed a document accepting liability for any penalty charges incurred under a charging scheme during the term of the vehicle hire agreement;
- (e) that in respect of an outstanding penalty charge the registered keeper of the vehicle did not receive the penalty charge notice in question;
- (f) that the registered keeper of the vehicle made representations to the charging authority against any of the original penalty charges but did not receive a notice of rejection from the charging authority; or
- (g) that the registered keeper of the vehicle appealed to an adjudicator against a rejection of representations made to the charging authority in respect of any of the original penalty charges but had no response to the appeal.

(4) A charging authority may disregard any representation received by them after the end of the period of 28 days beginning with the date on which the relevant person is informed in accordance with paragraph (1) of the right to make representations.

(5) It shall be the duty of a charging authority to whom representations are duly made under this regulation, before the end of 28 days beginning with the day on which they receive the representations—

- (a) to consider them and any supporting evidence which the person making them provides; and
- (b) to serve on that person a notice including reasons of their decision as to whether or not they accept that one or more of the grounds has been established.

(6) Where a charging authority fails to comply with paragraph (5)—

- (a) it shall be deemed to have accepted that one or more of the grounds has been established and to have served notice to that effect under paragraph (5)(b); and
- (b) regulation 22 shall have effect as if it required any refund of charges to be made immediately after the end of that period.

Refund of charges

22.—(1) Where a charging authority serves notice under regulation 21(5)(b) that it accepts that one or more of the grounds has been established it shall when serving that notice or as soon as practicable thereafter refund to the registered keeper or keeper—

- (a) any penalty charges or other charges—
 - (i) paid to recover the vehicle after it had been removed from a road; or
 - (ii) deducted from the proceeds of disposal of the vehicle.

Rejection of representations

23.—(1) Where a charging authority serves notice under regulation 21(5)(b) that it does not accept that a ground has been established, that notice shall—

- (a) inform the relevant person of the right to appeal to an adjudicator under regulation 24;
- (b) indicate the nature of the adjudicator's power to award costs against any person appealing to him under that regulation;
- (c) describe in general terms the form and manner in which such an appeal is required to be made; and
- (d) provide such other information as the charging authority considers appropriate.

Right to appeal to an adjudicator

24.—(1) Where a charging authority serves notice under regulation 21(5)(b) that it does not accept that one or more of the grounds on which representations were made under that regulation have been established, the relevant person may appeal to an adjudicator against the charging authority's decision, before—

- (a) the end of the period of 28 days beginning with the date of service of the notice; or
- (b) such longer period as an adjudicator may allow following consultation with the charging authority.

(2) An adjudicator may allow a longer period for an appeal under paragraph (1)(b) whether or not the period specified in paragraph (1)(a) has already expired.

(3) On an appeal under this regulation, the adjudicator shall consider the representations and any additional representations which are made on any grounds mentioned in regulation 21(3) and, if the adjudicator concludes—

- (a) that one or more of the representations have been established; and
- (b) that the charging authority would have been under the duty imposed by regulation 22 to refund any sum if they had served notice that they accepted that one or more of the grounds in question had been established,

the adjudicator shall direct the authority to make the necessary refund.

(4) It shall be the duty of a charging authority to whom such a direction is given to comply with it within 28 days of the date of the direction or within such other period as the adjudicator so directs.

PART 6

Adjudication and Appeals

Appointment of adjudicators

25.—(1) The Lord Chancellor shall appoint persons to act as road user penalty charging scheme adjudicators for the purpose of these Regulations.

(2) To be qualified for appointment as an adjudicator, a person must satisfy the judicial appointment eligibility condition within the meaning of section 50 of the Tribunals, Courts and Enforcement Act 2007(***) on a five year basis.

(3) Each adjudicator shall be appointed for such period as the Lord Chancellor may specify.

(4) Each adjudicator shall hold and vacate office in accordance with the terms of the appointment.

(5) Each adjudicator shall make an annual report to the Secretary of State for Transport on the discharge of their functions.

Procedure to be followed and administrative support

26.—(1) The Schedule to these Regulations shall have effect as to the procedure to be followed in relation to proceedings before adjudicators.

(2) Subject to the provisions of that Schedule, adjudicators may regulate their own procedure.

(3) The charging authority shall provide, or make arrangements for the provision of, accommodation, administrative staff and facilities for adjudicators, determine the places where they are to sit and shall designate a member of the administrative staff to perform the functions of the proper officer under the Schedule.

(4) The charging authority shall meet the expenses incurred under paragraph (3) and in remunerating adjudicators.

Evidence produced by a prescribed device

27.—(1) Evidence that a vehicle has incurred a charge under a scheme may be given by the production, in the same or in separate documents, of—

(a) a record produced by a prescribed device; and

(b) a certificate as to the circumstances in which the record was produced signed by a constable or by a person authorised to do so by the charging authority who installed the device.

(2) In paragraph (1)—

“prescribed device” means a camera or other device, including related equipment used to produce a record of a particular vehicle being used or kept on a road designated by a charging scheme and the date and time of such use or keeping.

(3) A document purporting to be a record or a certificate of the kind described in paragraph (1) shall be deemed to be such a record unless the contrary is proved.

Recovery of amounts payable under adjudication

28. Any amount payable under an adjudication shall be recoverable by the person to whom the amount is payable, as if it were payable under a county court order.

Service of notices and documents

29.—(1) This paragraph has effect in relation to any notice or other document required or authorised by Parts 3, 4 or 5 of these Regulations to be served on a person.

(2) Any notice or other document shall be regarded as having been served on a person if it is—

- (a) delivered to the person;
- (b) left at the person's proper address;
- (c) sent by first class post to the person at that address; or
- (d) transmitted to the person by fax or other means of electronic data transmission in accordance with subparagraph (3).

(3) Where the charging authority has determined that it is unable to serve a penalty charge notice or other notice or document, on the person who, in accordance with regulation 5, is liable to pay the penalty charge, because it cannot ascertain the person's address for service, service is deemed to have been effected, for the purposes of these Regulations, on the date of that determination.

(4) A document may be transmitted to a person by fax or other electronic data transmission where—

- (a) the person has indicated in writing, to the person sending the document, a willingness to regard a document as having been duly sent to him if it is transmitted to a specified fax telephone number or, as the case may be, a specified electronic address; and
- (b) the document is transmitted to that number or address.

Signed on behalf of the Secretary of State

Date *Name*
Parliamentary Under Secretary of State
Department for Transport

Signed by authority of the Lord Chancellor

Date *Name*
Parliamentary Under Secretary of State
Ministry of Justice

SCHEDULE
Procedure in Adjudication Proceedings

PART 1
Interpretation

Interpretation of Schedule

1.—(1) In this Schedule—

“appeal” means an appeal under regulation 10(1) or 24(1);

“document exchange” means a document exchange providing a system of delivery of documents by reference to numbered boxes at document exchanges;

“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 regulation 26(3) to perform the functions of the proper officer under this Schedule;

“register” means the register required to be kept under paragraph 21; and

“working day” means any day except a Saturday, a Sunday, Good Friday, Christmas Day or a bank holiday in England by virtue of the Banking and Financial Dealings Act 1971(†††).

(2) In this Schedule in relation to an appeal or any process connected with an appeal—

“appellant” means the person bringing the appeal;

“disputed decision” means the decision appealed against;

“the charging authority” means the charging authority who made the disputed decision; and

“the original representations” means the representations to the charging authority under regulation 7(1) or 21(1).

PART 2

Procedure Relating to Appeals

Initiating an appeal

2.—(1) An appeal shall be made by delivering a notice (in this Part referred to as a “notice of appeal”) to the proper officer.

(2) A notice of appeal—

- (a) must state the name and address of the appellant;
- (b) may specify some other address as being the address at which the appellant wishes documents to be sent to him in connection with the appeal;
- (c) must state the date and any reference number of the decision and the name of the charging authority; and
- (d) may include representations on one or more grounds specified in regulation 21(3) in addition to the original representations.

(3) If the notice of appeal is delivered to the proper officer later than the time limit specified in regulation 10(1) or 24(1) the appellant must include in the notice of appeal a statement of the reasons on which the appellant relies for justifying the delay and the adjudicator shall treat any such statement of reasons for delay as a request for extending that time limit.

(4) The appellant or his authorised representative shall sign the notice of appeal.

Action upon receipt of notice of appeal and copy of such notice

3.—(1) Upon receiving a notice of appeal the proper officer shall—

- (a) send an acknowledgment of its receipt to the appellant;
- (b) enter particulars of it in the register; and
- (c) send to the charging authority a copy of the notice of appeal and any directions extending the time limit for appealing.

(2) Upon receipt of a copy of the notice of appeal sent under this paragraph, the charging authority shall within 7 days deliver to the proper officer a copy of—

- (a) the original representations;
- (b) the relevant penalty charge notice (if any); and
- (c) the notice served under regulation 7(1) or 23(1) as the case may be.

(†††) 1971 c.80.

Further representations

4.—(1) Any party may deliver representations to the proper officer at any time before the appeal is determined.

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

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

(4) Any representations delivered under this paragraph shall be signed by, or by the authorised representative of, the party in question.

(5) Where the appellant delivers representations to the proper officer under this paragraph, the proper officer shall send a copy of the representations to the charging authority.

(6) Where the charging authority deliver representations to the proper officer under this paragraph, they shall at the same time send a copy of the representations to the appellant.

Right to require attendance

5.—(1) The adjudicator may require the attendance, at a time and place specified by the adjudicator, of any person as a witness at the hearing of an appeal and require that person to answer any questions or produce any documents in his custody or control which relate to any matter in the proceedings.

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

(3) A person shall not be bound to comply with a requirement under subparagraph (1) unless the person has been given at least 7 days notice of the hearing or, if less than 7 days, the person has accepted such notice and informed the adjudicator of such acceptance.

(4) A person shall not be bound to comply with a requirement under subparagraph (1) unless the person's necessary expenses of attendance are paid or reimbursed..

(5) No person shall be required to give any evidence or produce any documents under subparagraph (1) which could not be required to be given or produced in the trial of an action in a court of law.

Disposal of an appeal without a hearing

6.—(1) Subject to the provisions of this paragraph, the adjudicator may dispose of an appeal without a hearing.

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

- (a) the party who made the request withdraws the request before notice of a hearing has been sent to the other party under paragraph 7;
- (b) both sides have subsequently consented to the appeal being disposed of without a hearing; or
- (c) the party requesting the hearing, having been sent a notice of the hearing of an appeal in accordance with paragraph 7, fails to attend or be represented at the hearing.

(3) The adjudicator shall not dispose of an appeal without a hearing until after the expiration of 4 weeks beginning with the day on which an acknowledgement is sent in accordance with paragraph 3 unless both parties consent to the disposal taking place on an earlier date.

Notice of time and place of hearing

7.—(1) This paragraph shall have effect where a hearing is to be held for the purposes of disposing of an appeal.

(2) The proper officer shall fix the time, date and place of the hearing and, not less than 28 days before the date so fixed (or such shorter time as the parties agree), notify each party in writing or in such other manner as the proper officer thinks fit.

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

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

Admission to a hearing

8.—(1) Subject to the provisions of this paragraph, a hearing shall be held in public.

(2) The adjudicator may direct that the whole or any part of a hearing be held in private if satisfied that by reason of—

- (a) the likelihood of disclosure of intimate personal or financial circumstances;
- (b) the likelihood of disclosure of commercially sensitive information or information obtained in confidence; or
- (c) exceptional circumstances not falling within paragraphs (a) or (b),

it is just and reasonable so to do.

(3) Where the hearing is in private the adjudicator may admit such persons as the adjudicator considers appropriate.

(4) An adjudicator 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.

Appearances at a hearing

9.—(1) The following persons shall be entitled to appear at a hearing—

- (a) the registered keeper of the vehicle;
- (b) a person who has duly made representations in respect of the appeal; and
- (c) the charging authority.

(2) Any other person may appear at a hearing at the discretion of the adjudicator.

(3) Any person entitled or permitted to appear at a hearing may do so on his or her own behalf or be represented by counsel, a solicitor or, at the discretion of the adjudicator, by any other person.

Procedure at a hearing

10.—(1) At the beginning of the hearing of an appeal the adjudicator shall explain the order of proceedings to be adopted.

(2) Subject to the provisions of this paragraph, the adjudicator shall conduct the hearing of an appeal in such manner considered by the adjudicator most suitable to the clarification of the issues to be heard and generally to the just handling of the proceedings but the adjudicator shall so far as the adjudicator sees fit seek to avoid formality in the proceedings.

(3) At the hearing of an appeal—

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

(4) Without prejudice to paragraph 6(2)(c), where a party who has been sent a notice of the hearing of an appeal or has otherwise been notified of the hearing in accordance with paragraph 7 fails to attend the hearing, the adjudicator may dispose of the appeal in that party's absence.

Decisions on appeals

11.—(1) The adjudicator must give written reasons for the decision on an appeal.

(2) Where an appeal is disposed of at a hearing the adjudicator may give the decision and the reasons orally at the end of the hearing or may reserve the decision and give it and the reasons subsequently in writing.

(3) Upon the decision being given the proper officer shall—

- (a) as soon as practicable record the decision in the register, together with the adjudicator's reasons and any directions given; and
- (b) send a copy of the register entry to each party.

Review of adjudicator's decision

12.—(1) The adjudicator may, on the application of a party, review—

- (a) any interlocutory decision; or
- (b) any decision to determine that a notice of appeal does not accord with paragraph 2 or to dismiss or allow an appeal, or any decision as to costs, on one or more of the following grounds—
 - (i) the decision was wrongly made as the result of an administrative error;
 - (ii) a party who failed to appear or be represented at a hearing had good and sufficient reason for the failure to appear;
 - (iii) 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 reasonably have been known of or foreseen;
 - (iv) where the decision was made without a hearing, new evidence has become available since the decision was made, the existence of which could not reasonably have been known of or foreseen; or
 - (v) the interests of justice require such a review.

(2) An application under subparagraph (1) must—

- (a) be delivered to the proper officer within the period of 14 days beginning with the date on which the copy of the register entry is served on the parties; and
- (b) state the grounds in full.

(3) The parties shall have the opportunity to be heard on any application for review under subparagraph (1).

(4) Having reviewed the decision the adjudicator may direct that it be confirmed, that it be revoked or that it be varied.

(5) If, having reviewed a decision, the adjudicator directs that it be revoked, the adjudicator shall substitute a new decision or order a re-determination by himself or herself, the original adjudicator or a different adjudicator.

(6) Paragraph 11 shall apply to the confirmation, revocation or variation of a decision under this paragraph as it applies to a decision made on the disposal of an appeal.

Costs

13.—(1) The adjudicator shall not normally make an order awarding costs and expenses, but may, subject to subparagraph (2), make such an order—

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

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

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

Consolidation of proceedings

14.—(1) Where there are pending two or more appeals and it appears to an adjudicator that—

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

the adjudicator may order that all of the appeals or those specified in the order shall be considered together and may give such consequential directions as may appear to the adjudicator to be necessary.

(2) An order shall not be made under this paragraph unless all of the parties concerned have been given an opportunity of making representations against the making of the order.

Miscellaneous powers of adjudicators

15.—(1) The adjudicator may—

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

(2) An adjudicator may exercise the powers conferred by this Schedule other than paragraph 12 on his own or her own motion or on the application of a party to the appeal.

Clerical errors

16. Clerical errors in any document recording a direction or decision of the adjudicator, or errors in such a document arising from a mistake or omission, may be corrected by the proper officer on the direction of the adjudicator.

PART 3

Service of Documents and Notices

Service of documents on the parties

17.—(1) This paragraph has effect in relation to a document required or authorised by this Schedule to be served on a party to an appeal.

(2) A document shall be regarded as having been served on that party if it is—

- (a) delivered to that party;
- (b) left at that party's proper address;
- (c) sent by first class post to that party at that address; or
- (d) transmitted to that party by fax or other means of electronic data transmission in accordance with subparagraph (3).

(3) A document may be transmitted to a party by fax or other electronic data transmission where—

- (a) the party has indicated in writing to the party sending the document that the indicating party is willing to regard a document as having been duly sent by the sending party if it is transmitted to a specified fax telephone number or a specified electronic address; and

(b) the document is transmitted to that number or address.

(4) In the case of a charging authority, an indication under subparagraph (3)(a) may be expressed to apply in relation to any appeal to which it is the respondent.

(5) Where the proper address includes a box number at a document exchange, the delivery of such a document may be effected by leaving the document addressed to that box number—

(a) at that document exchange; or

(b) at a document exchange which transmits documents every working day to that document exchange.

and any such document so left shall, unless the contrary is proved, be taken to have been delivered on the second working day after the day on which it was left.

(6) For the purposes of this Schedule, and of section 7 (references to service by post) of the Interpretation Act(###) (“the 1978 Act”) in its application to this paragraph—

(a) the proper address of the appellant is the address for service specified pursuant to paragraph 2(2)(c) or, if no address is so specified, the address specified pursuant to paragraph 2(2)(b), and

(b) the proper address of a charging authority in proceedings in which it is the respondent is such address as the charging authority may specify from time to time in a notice delivered to the proper officer as being the authority's address for service in all such proceedings.

(7) If no address for service has been specified, the proper address for the purposes of this Schedule and section 7 of the 1978 Act shall be—

(a) in the case of an individual, the individual's usual or last known address;

(b) in the case of a partnership, the principal or last known place of business of the partnership within the United Kingdom;

(c) in the case of an incorporated or unincorporated body, the registered or principal office of the body.

(8) A party may at any time, by notice in writing delivered to the proper officer, change its proper address for the purposes of this Schedule and section 7 of the 1978 Act.

(9) A party may, by notice in writing delivered to the other party and the proper officer, vary or revoke any indication given under subparagraph (3)(a).

(10) Unless the contrary is proved, a notice or document—

(a) left at the proper address of a party shall be taken to have been delivered on the second working day after the day on which it was left;

(b) sent by fax or other means of electronic data transmission shall be taken to have been delivered on the second working day after the day on which it was transmitted.

Delivery of documents to the proper officer

18.—(1) This paragraph has effect in relation to any notice or other document required or authorised by or under this Schedule to be delivered to the proper officer.

(2) Any such notice or document may be delivered to the proper officer by being transmitted to the proper officer by fax or other means of electronic data transmission, but only to a telephone number or, as the case may be, electronic address for the time being published by the proper officer for the purpose of receiving such notices or documents.

(3) Any notice or document so transmitted shall, unless the contrary is proved, be taken to have been delivered on the second working day after the day on which it was transmitted.

(4) Where the address of the proper officer includes a box number at a document exchange the delivery of such a document may be effected by leaving the document addressed to that box number—

(a) at that document exchange; or

(b) at a document exchange which transmits documents every working day to that exchange.

and any such document so left shall be taken, unless the contrary is proved, to have been delivered on the second working day after the day on which it was left.

(5) Paragraphs 2(4) and 4(4)—

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

PART 4

The Register

The register

19.—(1) The proper officer shall establish and maintain, in accordance with the following provisions of this paragraph, a register for the purpose of recording proceedings conducted under these Regulations.

(2) The register shall be kept open for inspection by any person without charge at all reasonable hours at the principal office of the adjudicators.

(3) The register may be kept in electronic form.

(4) If the register is kept in electronic form, the duty to allow inspection is to be treated as a duty to allow inspection of a reproduction in legible form of the recording of the entry the inspection of which is being sought.

(5) A document purporting to be certified by the proper officer to be a true copy of any entry of a decision in a register shall be evidence of the entry and of the matters contained in it.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the civil enforcement of a charge imposed in respect of any motor vehicle by a charging scheme under Part III of the Transport Act 2000 (c.38). for the use or keeping of a motor vehicle on roads.

Part 1 (Regulations 1 and 2) deals with preliminary matters including defining words and terms used in the Regulations.

Part 2 (Regulations 3 to 5) permits, in Regulation 3, the charging authority to make provision, in a charging scheme, for the imposition of a penalty charge in the event that a vehicle incurs a charge under the scheme but that charge is not paid in full in accordance with the scheme. Under Regulation 4, the charging authority must state, in the charging scheme order, the level of penalty charge that applies subject to the maximum rates specified. Regulation 5 specifies that, subject to the small number of exceptions stated, the registered keeper of a vehicle, is liable for paying a penalty charge incurred by that vehicle.

Part 3 (Regulations 6 to 13) provides for the recovery of a penalty charge by permitting a charging authority to serve, in accordance with Regulation 6, a penalty charge notice on the relevant person. That person is entitled, under Regulation 7, to challenge the imposition of the penalty charge by making representation to the charging authority, which may accept the representations and cancel the penalty charge, under Regulation 8, or reject the representations under Regulation 9. Where the representations are rejected, the person may appeal, under Regulation 10, to an adjudicator who will consider the appeal in accordance with the procedure detailed in the Schedule.

Where a penalty charge remains unpaid after the relevant period specified in Regulation 11, the charging authority may issue a charge certificate under that regulation, after which, if the penalty charge continues to remain unpaid for the relevant period, Regulation 12 permits the charging authority to recover the amount due as if it were payable under a county court order. Any amount payable under a charge

certificate or an adjudication may, under Regulation 13, be enforced using bailiffs in accordance with the Enforcement of Road Traffic Debts Order 1993 (S.I. 1993/2073).

Under Part 4 (Regulations 14 to 19) a charging authority may provide, in the charging scheme, for a range of enforcement powers in respect of vehicles, including the power to examine and enter vehicles (Regulation 14 and 15 respectively) to ensure that any item, required by the charging scheme, to be carried, used or displayed in a vehicle is being properly carried, used or displayed. In the event that it is not, a power of seizure may be included, under Regulation 16, in a scheme order to permit the seizure of such an item.

Where three or more penalty charges remain unpaid in relation to a vehicle, that vehicle may be immobilised, removed, stored and disposed of to recover such charges, if powers under Regulation 17 are included in the relevant charging scheme order. Under Regulation 18, a person may take possession of a removed vehicle subject to proof of identity and ownership and payment of all outstanding charges. Regulation 19 allows a registered keeper or keeper to recover any excess monies following the disposal of the vehicle and payment of all outstanding charges within one year of such disposal.

Part 5 (Regulations 20 to 24) specifies the circumstances in which and the process by which a registered keeper or keeper of a vehicle, that has been immobilised, removed, stored or disposed of, may make representations to the charging authority against such actions. The charging authority may accept such representations and make an appropriate refund under Regulation 22 or reject such representations under Regulation 23, in which case the registered keeper or keeper may appeal to an adjudicator under Regulation 24.

Part 6 (Regulations 25 to 29) empowers the Lord Chancellor, under Regulation 25, to appoint adjudicators to act in relation to appeals made under these Regulations and provides that the procedure contained in the Schedule shall apply to such adjudications. Regulation 27 provides for evidential matters relevant to an adjudication, Regulation 28 provides for the recovery of amounts payable under an adjudication and Regulation 29 provides for the service of documents in relation to an adjudication.

The Schedule lays out the procedure that applies to an adjudication under these Regulations.

Annex B Consultation Principles

The consultation is being conducted in line with the Government's key consultation principles which are listed below. Further information is available on the Better Regulation Executive website at <https://update.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance>

If you have any comments about the consultation process please contact:

Consultation Co-ordinator
Department for Transport
Zone 1/14 Great Minster House
London SW1P 4DR
Email consultation@dft.gsi.gov.uk

Consultation Principles

- departments will follow a range of timescales rather than defaulting to a 12-week period, particularly where extensive engagement has occurred before;
- departments will need to give more thought to how they engage with and consult with those who are affected;
- consultation should be 'digital by default', but other forms should be used where these are needed to reach the groups affected by a policy; and
- the principles of the Compact between government and the voluntary and community sector will continue to be respected.

Annex C List of those consulted

English Local Authorities
British Vehicle Rental and Leasing Association
Nexus
Transport for Greater Manchester
Merseyside Travel ITA
South Yorkshire Passenger Transport Executive
West Yorkshire Passenger Transport Executive
Aldwark Bridge Ltd
Clifton Suspension Bridge Trust
Dunham Bridge Company
Humber Bridge Board
Itchen Toll Bridge
Mersey Gateway
Severn River Crossing Plc
Shrewsbury Bridge
Tamar Bridge and Torpoint Ferry
Whitchurch Bridge
Whitney on Wye
Bournemouth-Swanage Motor Road Ferry Company
Dartmouth Land Company Ltd
Midland Expressway Limited
Traffic Enforcement Centre
Traffic Penalty Tribunal
British Parking Association
Civil Enforcement Agency

REPORT FOR INFORMATION

SUBJECT: AUDIT COMMISSION SMALL BODIES ANNUAL RETURN
FOR YEAR ENDED 31ST MARCH 2012

REPORT OF: The Lead Officer on behalf of the Advisory Board

PURPOSE OF THE REPORT

To report the findings of the external audit for 2011/12.

RECOMMENDATIONS

It is recommended that the Joint Committee:

1. Notes the findings of the external audit for 2011/12 in the enclosed Annual Return (Appendix 1) and Issues Arising Report (Appendix 2).

CONTACT OFFICER

Louise Hutchinson, PATROL, Barlow House, Minshull Street,
Manchester, M1 3DZ Tel: 0161 242 5270

1. Background

- 1.1 At its meeting on 28th June 2010, the Joint Committee noted the Audit Commission's recommendation to appoint BDO LLP for a period of three years 2009/10 to 2011/12 inclusive to conduct a Limited Assurance Audit.
- 1.2 The Accounts and Audit Regulation changes for small bodies require the Annual Return to be approved before the end of June. The Joint Committee approved the unaudited return in June 2012.
- 1.3 Enclosed is the complete audited Annual Return (Appendix 1) and Issues Arising Report for 2011/12 (Appendix 2).

2. Recommendations

It is recommended that the Joint Committee:

- i) Notes the findings of the audit in the enclosed Annual Return (Appendix 1) and Issues Arising Report (Appendix 2).

40 2717

Small Bodies in England Electronic annual return Year ended 31 March 2012

Small relevant bodies in England with an annual turnover of £6.5 million or less must complete an annual return summarising their activities at the end of each financial year.

The annual return on pages 2 to 5 is made up of four sections:

- Sections 1 and 2 are completed by the person nominated by the body.
- Section 3 is completed by the external auditor.
- Section 4 is completed by the body's internal audit provider.

The body must approve this annual return no later than 30 June 2012.

Completing your electronic annual return (eAR)

Guidance notes, including a completion checklist, are provided on page 6 and at relevant points in the annual return. For further information on eAR go to <http://www.audit-commission.gov.uk/audit-regime/support-guidance/Pages/Annualreturn.aspx>

Once downloaded you are able to complete certain sections of this e-annual return. You must then print the e-annual return to complete the remainder of the information required before approval by the body. The sections available for completion electronically are:

- the name of your body in sections 1, 2 and 4 on pages 2, 3 and 5
- boxes 1 to 10 in Section 1 on page 2; and
- the responses in boxes 1 to 8 in Section 2 on page 3.

You cannot save the e-annual return or send it electronically. You may only print it.

Complete all sections highlighted in red. Do not leave any red box blank. Incomplete or incorrect returns require additional external audit work and may incur additional costs.

Send the annual return, together with your bank reconciliation as at 31 March 2012, an explanation of any significant year on year variances in the accounting statements and any additional information requested, to your appointed external auditor by the due date.

Your auditor will identify and ask for any documents needed for audit. Therefore, unless requested do not send any original financial records to the external auditor.

Audited and certified annual returns will be returned to the body for publication or public display of sections 1, 2 and 3. You must publish or display the audited annual return by 30 September 2012.

It should not be necessary for you to contact the external auditor or the Audit Commission directly for guidance.

More guidance on completing this annual return may be found in the Practitioners' Guides for either local councils or internal drainage boards. These publications may be downloaded from the National Association of Local Councils (NALC) or Society of Local Council Clerks (SLCC) websites (www.nalc.gov.uk or www.slcc.co.uk) or from the members area of the Association of Drainage Authorities website (www.ada.org.uk).

Section 1 – Accounting statements for:

Bus Lane Adjudication Joint Committee

	Year ending		Notes and guidance
	31 March 2011 £	31 March 2012 £	
1 Balances brought forward	65,582	121,453	Total balances and reserves at the beginning of the year as recorded in the body's financial records. Value must agree to Box 7 of previous year.
2 (+) Income from local taxation and/or levy	0	0	Total amount of local tax and/or levy received or receivable in the year including funding from a sponsoring body.
3 (+) Total other receipts	230,341	335,010	Total income or receipts as recorded in the cashbook less income from taxation and/or levy (box 2). Include any grants received here.
4 (-) Staff costs	0	0	Total expenditure or payments made to and on behalf of all body employees. Include salaries and wages, PAYE and NI (employees and employers), pension contributions and employment expenses.
5 (-) Loan interest/capital repayments	0	0	Total expenditure or payments of capital and interest made during the year on the body's borrowings (if any).
6 (-) All other payments	174,470	362,603	Total expenditure or payments as recorded in the cashbook less staff costs (box 4) and loan interest/capital repayments (box 5).
7 (=) Balances carried forward	121,453	93,860	Total balances and reserves at the end of the year. Must equal (1+2+3) – (4+5+6)
8 Total cash and short term investments	280,050	192,415	The sum of all current and deposit bank accounts, cash holdings and short term investments held as at 31 March – to agree with bank reconciliation.
9 Total fixed assets and long term assets	0	0	The recorded book value at 31 March of all fixed assets owned by the body and any other long term assets e.g. loans to third parties and any long-term investments.
10 Total borrowings	0	0	The outstanding capital balance as at 31 March of all loans from third parties (including PWLB).

I certify that for the year ended 31 March 2012 the accounting statements in this annual return present fairly the financial position of the body and its income and expenditure, or properly present receipts and payments, as the case may be.

Signed by Responsible Financial Officer:

Richard R

Date 15/6/12

I confirm that these accounting statements were approved by the body on:

26 06 2012

and recorded as minute reference:

Signed by Chair of meeting approving these accounting statements:

P. Dickens

Date 26 6 2012.

Section 2 – Annual governance statement

We acknowledge as the members of:

Bus Lane Adjudication Joint Committee

our responsibility for ensuring that there is a sound system of internal control, including the preparation of the accounting statements. We confirm, to the best of our knowledge and belief, with respect to the accounting statements for the year ended 31 March 2012, that:

		Agreed – Yes	No	'Yes' means that the body:
1	We approved the accounting statements prepared in accordance with the requirements of the Accounts and Audit Regulations and proper practices.	<input checked="" type="radio"/>	<input type="radio"/>	prepared its accounting statements in the way prescribed by law
2	We maintained an adequate system of internal control, including measures designed to prevent and detect fraud and corruption and reviewed its effectiveness	<input checked="" type="radio"/>	<input type="radio"/>	made proper arrangements and accepted responsibility for safeguarding the public money and resources in its charge
3	We took all reasonable steps to assure ourselves that there are no matters of actual or potential non-compliance with laws, regulations and codes of practice that could have a significant financial effect on the ability of the body to conduct its business or on its finances.	<input checked="" type="radio"/>	<input type="radio"/>	has only done things it has the legal power to do and conformed to codes of practice and standards in the way it has done so
4	We provided proper opportunity during the year for the exercise of electors' rights in accordance with the requirements of the Accounts and Audit Regulations.	<input checked="" type="radio"/>	<input type="radio"/>	during the year gave all persons interested the opportunity to inspect and ask questions about the body's accounts
5	We assessed the risks facing the body and taken appropriate steps to manage those risks, including the introduction of internal controls and external insurance cover where required.	<input checked="" type="radio"/>	<input type="radio"/>	considered the financial and other risks it faces and dealt with them properly.
6	We maintained throughout the year an adequate and effective system of internal audit of the body's accounting records and control systems.	<input checked="" type="radio"/>	<input type="radio"/>	arranged for a competent person, independent of the financial controls and procedures, to give an objective view on whether internal controls meet the needs of the body.
7	We took appropriate action on all matters raised in reports from internal and external audit.	<input checked="" type="radio"/>	<input type="radio"/>	responded to matters brought to its attention by internal and external audit.
8	We considered whether any litigation, liabilities or commitments, events or transactions, occurring either during or after the year end, have a financial impact on the body and where appropriate included them in the accounting statements.	<input checked="" type="radio"/>	<input type="radio"/>	disclosed everything it should have about its business activity during the year including events taking place after the year-end if relevant.

This annual governance statement is approved by the body and recorded as minute reference

[Signature]

dated [26 06 2012]

Signed by:

Chair [P. D. Skenes]

dated [26.6.2012]

Signed by:

Clerk [Signature]

dated [26 06 2012]

*Note: Please provide explanations to the external auditor on a separate sheet for each 'No' response. Describe how the body will address the weaknesses identified.

Section 3 – External auditor’s certificate and opinion

Certificate

We certify that we have completed the audit of the annual return for the year ended 31 March 2012 of

BUS LANE ADJUDICATION SERVICE JC

Respective responsibilities of the body and the auditor

The body is responsible for ensuring that its financial management is adequate and effective and that it has a sound system of internal control. The body prepares an annual return in accordance with proper practices which:

- summarises the accounting records for the year ended 31 March 2012; and
- confirms and provides assurance on those matters that are important to our audit responsibilities.

Our responsibility is to conduct an audit in accordance with guidance issued by the Audit Commission and, on the basis of our review of the annual return and supporting information, to report whether any matters that come to our attention give cause for concern that relevant legislation and regulatory requirements have not been met.

External auditor’s report

~~(Except for the matters reported below)~~ on the basis of our review, in our opinion the information in the annual return is in accordance with proper practices and no matters have come to our attention giving cause for concern that relevant legislation and regulatory requirements have not been met. (*delete as appropriate).

(continue on a separate sheet if required)

Other matters not affecting our opinion which we draw to the attention of the body:

Please see enclosed report

**BDO LLP Southampton
United Kingdom**

(continue on a separate sheet if required)

External auditor’s signature BDO UK

External auditor’s name BDO LLP Southampton
United Kingdom Date 11/01/12

Note: The auditor signing this page has been appointed by the Audit Commission and is reporting to you that they carried out and completed all the work required of them by law. For further information please refer to the Audit Commission’s publication *Statement of Responsibilities of Auditors and of Audited Small Bodies*.

BDO LLP is a limited liability partnership registered in England and Wales (with registered number OC305127).

Section 4 – Annual internal audit report to

BUS LANE ADJUDICATION JOINT COMMITTEE

The body's internal audit, acting independently and on the basis of an assessment of risk, carried out a selective assessment of compliance with relevant procedures and controls expected to be in operation during the financial year ended 31 March 2012.

Internal audit has been carried out in accordance with the body's needs and planned coverage. On the basis of the findings in the areas examined, the internal audit conclusions are summarised in this table. Set out below are the objectives of internal control and alongside are the internal audit conclusions on whether, in all significant respects, the control objectives were being achieved throughout the financial year to a standard adequate to meet the needs of the body.

Internal control objective	Agreed? Please choose from one of the following		
	Yes	No	Not covered**
A Appropriate accounting records have been kept properly throughout the year.	✓		
B The body's financial regulations have been met, payments were supported by invoices, expenditure was approved and VAT was appropriately accounted for.	✓		
C The body assessed the significant risks to achieving its objectives and reviewed the adequacy of arrangements to manage these.	✓		
D The annual taxation or levy or funding requirement resulted from an adequate budgetary process; progress against the budget was regularly monitored; and reserves were appropriate.	✓		
E Expected income was fully received, based on correct prices, properly recorded and promptly banked; and VAT was appropriately accounted for.	✓		
F Petty cash payments were properly supported by receipts, expenditure was approved and VAT appropriately accounted for.			✓
G Salaries to employees and allowances to members were paid in accordance with body approvals, and PAYE and NI requirements were properly applied.	✓		
H Asset and investments registers were complete and accurate and properly maintained.	✓		
I Periodic and year end bank account reconciliations were properly carried out.	✓		
J Accounting statements prepared during the year were prepared on the correct accounting basis (receipts and payments or income and expenditure) agreed to the cash book, were supported by an adequate audit trail from underlying records, and where appropriate, debtors and creditors were properly recorded.			✓

For any other risk areas identified by the body (list any other risk areas below or on separate sheets if needed) adequate controls existed:

SEE ATTACHED AUDIT REPORT WHICH EXPLAINS THE AREAS 'NOT COVERED' AND AREAS FOR IMPROVEMENT

Name of person who carried out the internal audit: Tom Powell - Head of Audit & Risk Mgmt

Signature of person who carried out the internal audit: [Signature] Date: 14/06/2012

*Note: If the response is 'no' please state the implications and action being taken to address any weakness in control identified (add separate sheets if needed).

**Note: If the response is 'not covered' please state when the most recent internal audit work was done in this area and when it is next planned, or, if coverage is not required, internal audit must explain why not (add separate sheets if needed).

Bus Lane Adjudication Service Joint Committee
21st November 2012
Item 7 Appendix 2

ISSUES ARISING REPORT FOR
Bus Lane Adjudication Service Joint Committee
Audit for the year ended 31 March 2012

Introduction

The following matters have been raised to draw items to the attention of Bus Lane Adjudication Service Joint Committee. These matters came to the attention of BDO LLP during the audit of the annual return for the year ended 31 March 2012.

The audit of the annual return may not disclose all shortcomings of the systems as some matters may not have come to the attention of the auditor. For this reason, the matters raised may not be the only ones that exist.

The matters listed below are explained in further detail on the page(s) that follow;

- Minute reference
 - Internal auditor's recommendations
-

The following issue(s) have been raised as there are minor errors on the annual return which we wish to draw to the attention of the body so they do not occur again in future years.

Minute reference

What is the issue?

A minute reference has not been entered in Section 1 and Section 2.

The statements were approved and the minute reference should be BLAS/12/18.

Why has this issue been raised?

The approval of the sections have not been fully disclosed in accordance with the requirements.

What do we recommend you do?

The body must ensure that the annual return approval is adequately disclosed.

Further guidance on this matter can be obtained from the following source(s):

Governance and Accountability in Local Councils in England - A Practitioners Guide, NALC/SLCC

The following issue(s) have been raised to assist the body. The body is recommended to take action on the following issue(s) to ensure that the body acts within its statutory and regulatory framework.

Internal auditor's recommendations

What is the issue?

The internal auditor has noted a number of weaknesses in the financial systems of the body.

Why has this issue been raised?

The body is exposed to the risks associated with these weaknesses.

What do we recommend you do?

The body must implement the recommendations made by the internal auditor to improve the financial systems of the body as soon as possible or in any event before the end of the current financial year.

If the body addresses all the issues raised by the internal auditor the body should improve internal controls which will help to prevent and detect error and fraud and assist the body to operate in an effective and efficient manner.

Further guidance on this matter can be obtained from the following source(s):

Governance and Accountability in Local Councils in England - A Practitioners Guide, NALC/SLCC

No other matters came to our attention.

For and on behalf of
BDO LLP

Date: 14 September 2012

REPORT FOR RESOLUTION

SUBJECT: Budget Monitoring of Revenue Account 2012/13

REPORT OF: The Lead Officer on behalf of the Advisory Board

PURPOSE OF REPORT

To present to the Committee expenditure monitoring information in respect of the Revenue Account for year 2012/13.

RECOMMENDATIONS

It is recommended that the Joint Committee:

- [i] Notes the income and expenditure position at 30th September 2012.
- [ii] Notes that a further report will be presented to the January 2013 meeting.

CONTACT OFFICER

Louise Hutchinson, PATROL, Barlow House, Minshull Street, Manchester M1 3DZ
Tel: 0161 242 5252

1.0 INTRODUCTION

- 1.1 At the meeting of the Bus Lane Adjudication Service Joint Committee (BLASJC) held on 25th January 2012 the revenue budget estimate was approved for the year 2012/13.
- 1.2 This report provides the Committee with the expenditure position at 30th September 2012. Details are given in Table 1.
- 1.3 The tribunal is operated on a self-financing basis with income obtained from defraying expenses amongst the BLASJC member authorities.

2.0 BACKGROUND

- 2.1 The revenue budget estimate was established by the Committee for 2012/13 on the basis that this would reflect the Councils who were already members of the BLASJC.

3.0 MONITORING POSITION AT 30th September 2012

- 3.1 There is an underachievement against budgeted income as a result of optimistic forecasting. The impact of which has been mitigated by lower than budgeted expenditure. At the six month position there is a minimal variance between expenditure and actual income received.
- 3.2 The projected outturn suggests a minimal variance between expenditure and actual income received.

Table 1

Expenditure	Budget as in JC Papers Jan 11 2011/12	Projected Outturn Year 2011/12	Actual at 30 Sept Six Month 2012/13	Budget Six Month 2012/13	Variance Six Month 2012/13	Budget Year 2012/13	Projected Outturn Year 2012/13	Variance Year 2012/13
	£	£	£	£	£	£	£	£
Pro Rata per Appeal expenditure	231,176	323,229	155,956.41	242,421	86,465	484,843	484,843	0
Separate BLASJC costs	7,500	10,180	0	2,261	2,261	4,521	4,521	0
Service Management and Support	1,000	1,000	0	500	500	1,000	1,000	0
Audit Fee	3,150	3,000	0	1,500	1,500	3,000	3,000	0
Capital Finance Charges	0	0	0	500	500	1000	0	-1,000
Contingency	0	0	0	0	0	0	0	0
4th Qtr Rebate	0	0	0	0	0	0	0	0
Contribution to Reserve	3471	0	0	0	0	0	0	0
Total Expenditure	246,297	337,408	155,956	247,182	4,761	494,364	493,364	-1,000
Income								
Penalty Charge Notices	-246,297	-170,685	-161,448	-237,809	-76,361	-475,618	-494,364	-18,746
Contribution from Reserves	0		0	-9,373	-9,373	-18,746		-18,040
Total Income	-246,297	-170,685	-161,448	-247,182	-85,734	-494,364	-494,364	-36,786
Surplus/ Deficit	0	166,723	-5,492	0	-80,973	0	-1,000	-37,786

REPORT FOR RESOLUTION

SUBJECT: MEMORANDUM OF UNDERSTANDING BETWEEN THE
ADJUDICATORS AND THE JOINT COMMITTEES

REPORT OF: The Chief Adjudicator

PURPOSE OF REPORT

To seek approval of a Memorandum of Understanding between the Adjudicators and the Joint Committee.

RECOMMENDATIONS

The Joint Committee is recommended:

1. To approve the Memorandum of Understanding between the Adjudicators and the Joint Committee.
2. To agree that the Memorandum of Understanding will be a core governance document for the Joint Committee which will inform the Joint Committee's Schemes of Delegation and the Service Level Agreement with the Lead/Host Authority.
3. To agree to review the Memorandum of Understanding at the Joint Committee's annual meeting each year.

CONTACT:

Caroline Sheppard, Chief Adjudicator, Traffic Penalty Tribunal, Barlow House,
Minshull Street, Manchester M1 3DZ Tel: 0161 242 5252

1. BACKGROUND

1.1 The relationship between the Adjudicators and the Joint Committee is derived from and governed by the Traffic Management Act 2004 (TMA) and regulations made under it which:

- a) establishes the office of Adjudicator
- b) prescribes the roles and responsibilities of the Adjudicators and the Joint Committee.

1.2 The Joint Committee has been established to enable councils undertaking civil parking enforcement to exercise their functions under Section 81 of the Traffic Management Act 2004 and Regulations 17 and 18 of the Civil Enforcement of Parking Contraventions (England) General Regulations 2007. These functions are required to be exercised jointly with other councils in accordance with Regulation 16

1.3 Wales have separate regulations for parking enforcement, the Regulations are The Civil Enforcement of Parking Contraventions (Penalty Charge Notices, Enforcement and Adjudication (Wales) Regulations 2008. Regulations 17 and 18 are mirrored by Regulations 9 and 10 in Wales, and Regulation 16 in England is Regulation 8 in Wales.

1.4 So far as Adjudicators are concerned, the functions of the Joint Committee are as follows:

- a) With consent of the Lord Chancellor, to appoint and reappoint Adjudicators
- b) To remove Adjudicators from office with the agreement of the Lord Chancellor and Lord Chief Justice
- c) To determine the place at which Adjudicators are to sit.

The Joint Committee has formally delegated the above functions to the Chief Adjudicator.

1.5 The Joint Committees' functions also include:

- Providing accommodation, administrative staff (and resources) for the Adjudicators
- Defraying expenses incurred in the parking and bus lane Adjudicators performing their function.

1.6 The Regulations also provide that:

- In accordance with such requirements as may be imposed by the Joint Committee, each Adjudicator shall make an annual report to the Joint Committee on the discharge of his/her function. The Joint Committee has agreed that this requirement will be fulfilled by the Chief Adjudicator.
- The Joint Committees shall make and publish an annual report in writing to the Secretary of State on the discharge of the Adjudicators and their functions.

2 MEMORANDUM OF UNDERSTANDING

2.1 The transfer to a new Host Authority has highlighted the importance of clarity and understanding of the respective roles of the Adjudicators, Joint Committee and the Host Authority.

2.2 The Memorandum of Understanding (MOU) highlights the shared commitment of the Adjudicators and the Joint Committee to:

“A fair adjudication service for appellants including visible independence of adjudicators from the authorities in whose area they are working.”

2.3 The purpose of the MOU is to clarify the relationship between the Adjudicators and the Joint Committee and the shared requirement to preserve judicial independence.

2.4 The MOU seeks to provide an instrument to support our understanding of how the Parking and Traffic Regulations Outside London Joint Committee agreement will be delivered.

2.5 The MOU (Appendix 1) sets out principles to support the independence of the Traffic Penalty Tribunal, the functions of the Adjudicators and Joint Committee, the role of the Chief Adjudicator, the Chief Officer, the Proper Officer, accommodation and administrative staff, defraying the expenses of the Tribunal, the Advisory Board and the Host Authority role

2.6 The MOU will form part of the Joint Committee's governance documentation and will be reviewed on an annual basis.

RECOMMENDATIONS

The Joint Committee is recommended:

1. To approve the Memorandum of Understanding between the Adjudicators and the Joint Committee.
2. To agree that the Memorandum of Understanding will be a core governance document for the Joint Committee which will inform the Joint Committee's Schemes of Delegation and the Service Level Agreement with the Lead/Host Authority.
3. To agree to review the Memorandum of Understanding at the Joint Committee's annual meeting each year.

MEMORANDUM OF UNDERSTANDING

Between

Adjudicators of the Traffic Penalty Tribunal

And

**The PATROL ADJUDICATION JOINT COMMITTEE and
THE BUS LANE ADJUDICATION SERVICE JOINT COMMITTEE**

November 2012

INDEX

Section	Page
1. Introduction	3
2. Shared Aims	3
3. Overriding Principles	3
4. The Statutory Framework	4
5. Chief Adjudicator	5
6. Salaried Adjudicators	6
7. Judicial Leadership, Management and Discipline Functions	6
8. Removal of Adjudicators	6
9. Appeals and Judicial Matters	7
10. Lead Officer	7
11. Accommodation, Administrative Staff & Facilities	8
12. Defraying the Expenses of the Tribunal	10
13. Advisory Board	10
14. Lead/Host Authority	11
15. Review Mechanism	11
Appendix A Chief Adjudicator Role	12
Appendix B Figurative representation of the roles referred to in the Memorandum of Understanding	14

MEMORANDUM OF UNDERSTANDING

1. Introduction

This Memorandum of Understanding (MOU) is between:

- a) The Adjudicators
- b) The Parking and Traffic Regulations Outside London Joint Committee (PATROL) and the Bus Lane Adjudication Service Joint Committee (BLASJC)

The jurisdiction is England (outside London) and Wales. Legislation is devolved to Wales.

The purpose of this MOU is to clarify the relationship between the Adjudicators and the Joint Committees and promote mutual understanding of the duties and obligations to preserve judicial independence.

The MOU seeks to provide an instrument to support our understanding of how the Parking and Traffic Regulations Outside London Joint Committee Agreement will be delivered.

Not only must each party to the MOU perform their functions with a view to protecting the independence of the tribunal but must recognise that the public perception of independence is as important as de facto independence.

2. Shared Aims

The Adjudicators and Joint Committees are committed to a fair adjudication service for appellants including visible independence of adjudicators from the authorities in whose area they are working.

3 Overriding Principles

3.1 The overriding principle of this memorandum is that the Adjudicators are independent judicial office holders exercising a judicial function.

3.2 The Adjudicators are not employees of the Joint Committees. Together they constitute the independent and impartial tribunal for the determination of appeals made to them, as required by Article 6 of the European Convention on Human Rights. The Adjudicators and their administrative staff are, for convenience, described collectively as the Traffic Penalty Tribunal.

3.3 Neither the Chief Adjudicator (see paragraph 5 below) nor any other Adjudicator is answerable to the Joint Committees in any way as regards the performance of their judicial functions.

3.4 The Joint Committees has no remit to consider or influence decisions of adjudicators and the function of the adjudication service as an Independent Tribunal.

4. The Statutory Framework

4.1 The relationship between the Adjudicators and the Joint Committees is derived from and governed by the Traffic Management Act 2004 (TMA) and Transport Act 2000 (TA) and the regulations made under those two Acts which:

- a) establish the office of Adjudicator for parking appeals and bus lane appeals respectively
- b) prescribes the roles and responsibilities of the Adjudicators and the Joint Committees

4.2 The Joint Committees have been established to enable councils undertaking civil parking and bus lane enforcement to exercise their functions under

- a) Section 81 of the Traffic Management Act 2004 and Regulations 17 and 18 of the Civil Enforcement of Parking Contraventions (England) General Regulations 2007.
- b) Section 144 of the Transport Act 2000 and Regulation 11 of the Bus Lane Contravention (Penalty Charges, Adjudication and Enforcement (England) Regulations 2005.

These functions are exercised jointly in accordance with the other councils in accordance with the requirements of Regulations 16 and 12 respectively.

4.3 Wales has separate regulations for parking enforcement, the Regulations are The Civil Enforcement of Parking Contraventions (Penalty Charge Notices, Enforcement and Adjudication (Wales) Regulations 2008. Regulation 17 and 18 are mirrored by Regulations 9 and 10 in Wales, and Regulation 16 in England is Regulation 8 in Wales

4.4 The TMA and TA regulations require Enforcement Authorities in England and Wales (TA relates to England only) to establish Joint Committees on which are conferred certain functions relating to parking and bus lane appeals.

So far as the Adjudicators are concerned, the functions of the Joint Committees are as follows:

- a) With consent of the Lord Chancellor, appoint and reappoint Adjudicators
- b) Remove Adjudicators from office with the agreement of the Lord Chancellor and Lord Chief Justice
- c) Determine the place at which Adjudicators are to sit

The Joint Committees have formally delegated the above functions to the Chief Adjudicator (see Section 5 below).

The Joint Committees' functions also include:

- Providing or making arrangements for accommodation, administrative staff (and facilities) for the Adjudicators
- Defraying expenses incurred in the Adjudicators performing their function.

4.5 The Regulations also provide that:

- In accordance with such requirements as may be imposed by the Joint Committee, each Adjudicator shall make an annual report to the Joint Committees on the discharge of his/her function. The Joint Committees have agreed that this requirement will be fulfilled by the Chief Adjudicator.
- The Joint Committees shall make and publish an annual report in writing to the Secretary of State on the discharge of the Adjudicators and their functions.

5. Chief Adjudicator

5.1 There is no statutory provision for a President or Chief Adjudicator. Nevertheless, the Joint Committees and the Adjudicators have agreed:

- a) There is a need for a de-facto Chief Adjudicator
- b) The Joint Committees shall designate one of the Adjudicators to be the Chief Adjudicator
- c) The role and responsibilities of the Chief Adjudicator are set out at Appendix A and shall include all aspects of judicial leadership and management including the following functions that the Joint Committee have delegated to the Chief Adjudicator:

- i) With the consent of the Lord Chancellor, the making of and reappointment of the part-time Adjudicator appointments, for a period not exceeding 5 years. Such appointments to be sufficient to meet the needs of the service, as appropriate.
- ii) The determination of the terms and conditions applying to Adjudicators having regard to principles established for such judicial appointments and conduct by the Lord Chief Justice and Lord Chancellor.
- iii) The determination of where Adjudicators shall sit.

It is also for the Chief Adjudicator:

- iv) To obtain such legal advice and representation necessarily required for the Adjudicators to perform their functions and to arrange for defense of any legal proceedings arising from the exercise of those functions, including the instruction of Counsel.
- v) To conduct and approve press and media relations relating to the Traffic Penalty Tribunal, including press conferences, publicity and public relations and Tribunal information and publications
- vi) To oversee promotion of the Traffic Penalty Tribunal

6. Salaried Adjudicators

6.1 The Chief Adjudicator and salaried Adjudicators have a contract of employment with the Host Authority (see section 14.0) for employment rights such as salary and pensions however they are not accountable to the Chief Executive of the Host Authority for the performance of their functions.

7. Judicial Leadership, Management and Discipline Functions

7.1 Neither the Joint Committees nor the Host Authority are liable for Judicial Leadership, Management and Discipline functions. However, the Joint Committees will nonetheless indemnify the Chief Adjudicator for any action taken against her/him in the performance of these judicial leadership duties.

8. Removal of Adjudicators

8.1 An Adjudicator may only be removed from office for misconduct or if unable or unfit to discharge his or her functions (s 81 (2) (d) Traffic Management Act 2004.

9. Appeals and Judicial Matters

9.1 Appeals are made to the Adjudicators and are their responsibility. They have a duty to ensure that appeals are dealt with in accordance with the requirements of Article 6 of the European Convention on Human Rights for a fair and public hearing within a reasonable time.

9.2 Judicial matters are entirely the responsibility of the Chief Adjudicator to determine.

These include:

- a) Monitoring and appraisal of adjudicators' competencies
- b) Adjudicator Training
- c) Dealing with judicial complaints and discipline
- d) Allocation of cases

9.3 The following are also matters for the Chief Adjudicator to determine:

- a) Administrative procedures
- b) Training requirements for Adjudicators
- c) Communications strategy

9.4 The Joint Committees would expect to be consulted to the extent that 9.2 have budgetary implications.

9.5 The Chief Adjudicator may delegate functions for the expeditious operation of the Tribunal.

10. Lead Officer

10.1 The PATROLAJC and BLASJC Agreements make provision for the appointment of a Lead Officer to whom functions are delegated pursuant to that Deed of Arrangement and the Standing Orders of the Joint Committees.

10.2 To maintain the independence and autonomy of the tribunal from the enforcement authorities the expectation is that the Joint Committees will request the Chief Executive of the Host Authority to nominate as Lead Officer the Head of Service, who will be responsible generally for delivering the delegated functions, and in particular to:

- (a) Be responsible for the administration of the Joint Committees and the Traffic Penalty Tribunal and provide for the Adjudicators on behalf of the Joint Committees, the accommodation, administrative staff and facilities. The Lead Officer has no remit to influence the decisions of the Adjudicators.
- (b) Be responsible for ensuring that the Adjudicators requirements as set out in the Memorandum of Understanding with the Joint Committees are met within the Financial Regulations of the Joint Committee.
- (c) Work in partnership with the Chief Adjudicator to ensure the vision, aims and objectives of the Tribunal are achieved
- (d) Provide strong and strategic leadership to manage the support function for the Adjudicators to deliver an efficient service that ensures all appeals are held within legal requirements and performance criteria.
- (e) Manage the Service Level Agreement with the Host Authority on behalf of the Joint Committees.

11. Accommodation, administrative staff and facilities

- 11.1 The Joint Committees have a statutory duty to provide accommodation, administrative staff and facilities for the Adjudicators sufficient to enable them to perform their functions in accordance with their duty as set out in Section 4 above.
- 11.2 The nature of administrative support (including staff, facilities and accommodation) are for agreement between the Adjudicators and the Joint Committees, having regard to the Joint Committees' duty to the Adjudicators set out in Section 4 above
- 11.3 The accommodation and administrative staff provided for the Adjudicators by the Joint Committees in accordance with their statutory duties are, for convenience, along with the body of the Adjudicators whom they support, described collectively as the Traffic Penalty Tribunal. The Traffic Penalty Tribunal is not a legal entity.
- 11.4 The Joint Committees are responsible for the management of the accommodation and facilities including health and safety procedures for all users of the accommodation.
- 11.5 In accordance with the regulations made under the TMA and the TA, the Joint Committees are required to appoint one member of staff to fulfill the duties of the "Proper Officer" for the purposes of those regulations. It is

anticipated that the Joint Committees will consult with the Chief Adjudicator on the appointment of the Proper Officer.

- 11.6 The function of the staff, including the Proper Officer, is to support the Adjudicators in the performance of their function and to carry out such administrative tasks as the Adjudicators require in that connection. They act under the direction of the Adjudicators.
- 11.7 The Host Authority will provide contracts of employment for the staff provided by the Joint Committees to ensure their employment rights and obligations.
- 11.8 For the purposes of employment rights and obligations, while some of the employment policies of the Host Authority will apply, it should be recognized that the tribunal staff are performing duties stemming from the procedural regulations that govern the tribunal, or under the delegation of Adjudicators, the latter takes precedence.
- 11.9 The Joint Committees will ensure that staff provided for the Adjudicators carry out their functions effectively and efficiently and are responsible for their:
 - a) Recruitment
 - b) Training
 - c) Line Management
 - d) Appraisal
 - e) Disciplinary procedures, including considering complaints, grievances etc.

The staff will be selected by open recruitment (except where specifically agreed by the Chief Adjudicator) for skills, experience and aptitude to administer the tribunal in accordance with the regulation governing the tribunal procedure. The Chief Adjudicator will be consulted on the appointment of senior posts and staffing structures.

When the tribunal staff are performing these functions, management instructions will support and underpin the directions of the adjudicator.

These functions are delegated to the Joint Committees' Lead Officer in consultation with the Chief Adjudicator.

- 11.10 There is an expectation that Tribunal HR policies should be formulated in consultation with the Host Authority but there is not an expectation that the policies of the Host Authority will automatically be adopted. Policies need to be fit for purpose for a national Tribunal, with particular regard to Wales, and its procedural regulations.

12.0 Defraying the expenses of the Tribunal

- 12.1 The Joint Committees are responsible for defraying the expenses incurred in the Adjudicators performing their functions.
- 12.2 Consequent upon the duty specified in paragraph 12.1, the Joint Committees are responsible for:
- a) approving the budget for the Tribunal and determining the contribution for member authorities.
 - b) financial control, management and monitoring

The Joint Committees will consult the Adjudicators in approving the budget and will otherwise consult with them as may be appropriate for the proper discharge of these functions.

13. Advisory Board

- 13.1 The Joint Committees' Standing Orders provide for the Joint Committees to establish and appoint an Advisory Board comprising such officers and persons appointed by the Joint Committees to advise them on their functions .
- 13.2 The purpose of the Advisory Board is to assist and advise the Joint Committees on the overall policies and strategies for administering the adjudication service and on their responsibilities under the Traffic Management Act 2004 and Bus Lane Contraventions, (Penalty Charges, Adjudication and Enforcement)(England) Regulations 2005.
- 13.3 The Advisory Board has no remit to consider or influence decisions of adjudicators and the function of the adjudication service as an Independent Tribunal.
- 13.4 The diversity of membership of the Advisory Board including judicial expertise and consumer representation strengthens the scrutiny function it performs, is fundamental to the independence of the governance of the tribunal, and is of mutual benefit to the Adjudicators, the Joint Committees and Host Authority.

14.0 Lead/Host Authority

- 14.1 While the Joint Committees have statutory duties and identities, they do not have corporate status and therefore cannot contract or hold property

in their joint names; consequently they will appoint one of the authorities to hold property as trustee for the other constituent authorities comprising the joint committees, and act as agent to enable goods and services to be secured by Joint Committees. This authority, known as the Lead or Host Authority, may itself provide such goods and services as the PATROLAJC may from time to time determine.

- 14.2 For the purposes of this Memorandum, to assist our understanding of the duties and obligations to preserve judicial independence, the Lead Authority will be referred to as the Host Authority.
- 14.3 The expectation is that the relationship between the Lead Authority and both the Joint Committees and the Tribunal will replicate that of an arms length body, with the Lead Authority providing services and advice as required.
- 14.4 The services provided by the Lead Authority, enabling the Joint Committees to provide the resources to the Adjudicators as identified in this Memorandum of Understanding, will be supported by a Service Level Agreement with the Joint Committees.
- 14.5 The period of tenure for the Lead Authority is five years.
- 14.6 For the purposes of this MOU the expectation is that the Lead/Host Authority is Cheshire East Council.

15. Review Mechanism

- 15.1 The MOU will be reviewed by the Adjudicators and the Joint Committees on an annual basis. This review will inform the annual review of the service level agreement between the Joint Committees and the Lead Authority.
- 15.2 Should the Chief Adjudicator have any concerns about matters impacting upon the independence of the Adjudicators, this will be brought to the immediate attention of the Chairs of the Joint Committees and/or their Advisory Board.

APPENDIX A

CHIEF ADJUDICATOR ROLE

Introduction

The Chief Adjudicator's role is to recruit, lead and manage the Adjudicators with the aim of delivering a fair, timely and efficient adjudication service. In so doing, the responsibility of the Chief Adjudicator shall include the following:

1. Arrange the recruitment of an appropriate number of Adjudicators
2. Advise the Joint Committees on the removal of Adjudicators where necessary
3. Advise the Joint Committees on the reappointment of Adjudicators
4. Arrange appropriate induction and continuing training for Adjudicators, supplemented by appropriate guidance materials
5. Ensure the independence of Adjudicators
6. Monitoring, mentoring and appraisal of Adjudicators
7. Represent the Adjudicators in dealing with others, including:
 - i) The Joint Committees
 - ii) Government
 - iii) The press
8. Ensure proper rules of procedure and practices and promote consistency in their application.
9. Establish appropriate delegation in respect of the Chief Adjudicator and Adjudicator functions for the expeditious operation of the tribunal.
10. Ensure that administrative provision for Adjudicators is adequate and appropriate.
11. Deal with complaints against Adjudicators in accordance with the Adjudicators' Judicial Complaints Protocol, and other disciplinary matters
12. Provide guidance and support to individual Adjudicators
13. Deal with representation of Adjudicators in the event of a judicial review of their decision or other legal proceedings arising from the performance of their function.
14. Allocation of cases

15. On behalf of the Adjudicators, and in fulfillment of their obligation to the Joint Committees to report annually, author and present an annual report to the Joint Committees on the discharge by the Adjudicators of their functions with a view to its subsequent publication to the Secretary of State.
16. Keep the Joint Committees informed of all legal matters affective implementation and maintenance of the adjudication system.

APPENDIX B

FIGURATIVE REPRESENTATION OF THE ROLES REFERRED TO IN THE MEMORANDUM OF UNDERSTANDING

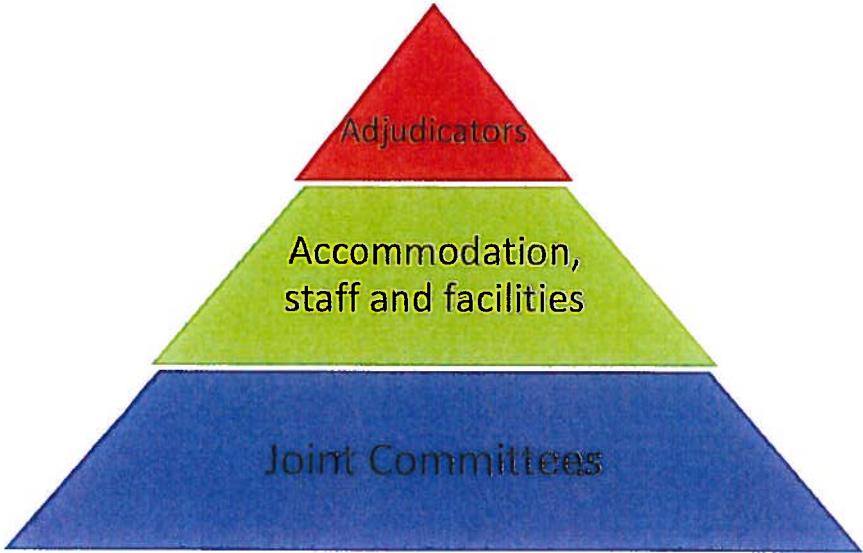


Fig 1. Provision of Services to Adjudicators



Fig 2. Governance Structure

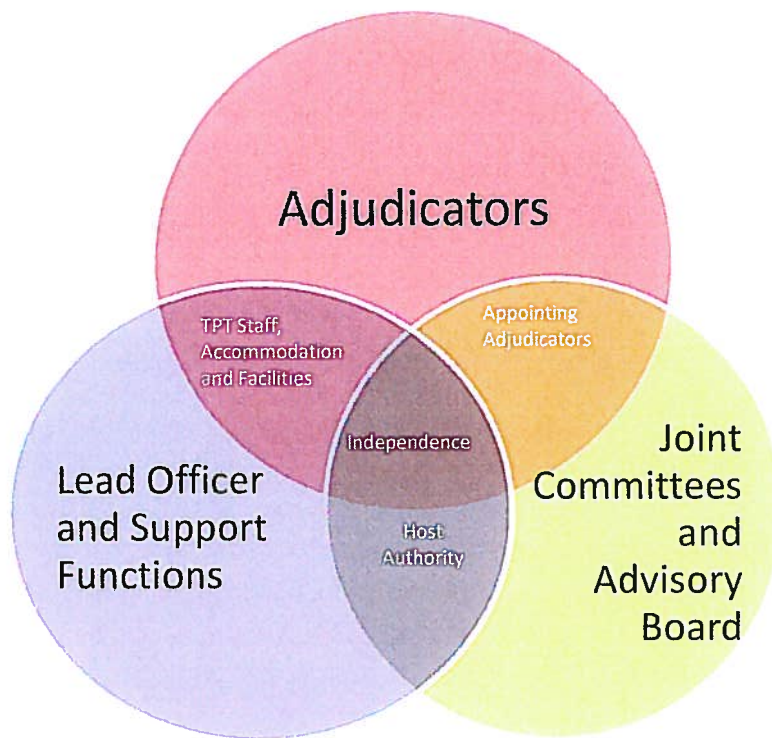


Fig 3. Overview of Joint Committee Relationships

REPORT FOR RESOLUTION

SUBJECT: APPOINTMENT OF CHESHIRE EAST AS THE NEW
LEAD AUTHORITY

REPORT OF: THE HEAD OF SERVICE ON BEHALF OF THE
ADVISORY BOARD

PURPOSE OF REPORT

To make recommendations in relation to the transfer of Lead Authority function on behalf of the Joint Committee.

RECOMMENDATIONS

The Joint Committee is recommended to:

1. In accordance with the PATROL Adjudication Joint Committee (PATROLAJC) Agreement, appoint Cheshire East Council as Lead Authority (to be known for day to day purposes as the Host Authority) to the Joint Committee with effect from 1st April 2013 for a period of five years to 31 March 2018. The commencement date will be preceded by a phased transition to enable premises to be commissioned by 31 March 2013
2. Agree to new Terms of Appointment of the Lead Authority being negotiated between the Joint Committee and the Lead Authority in accordance with the PATROLAJC Agreement, such new Terms of Appointment to be in the form of a Service Level Agreement between the Joint Committee and the Lead Authority to be presented for approval to the PATROLAJC Executive Sub Committee in January 2013.
3. Agree that the Service Level Agreement will be informed by the Memorandum of Understanding between the Adjudicators and the Joint Committee, with both documents being reviewed annually.
4. Request the Chief Executive of Cheshire East Council to nominate the Head of Service to undertake the role of Lead Officer in accordance with the PATROLAJC Agreement and a Scheme of Delegation from the Joint Committee.

5. Agree that a Scheme of Delegated Functions will be presented to the June 2013 meeting of the PATROL Adjudication Joint Committee for approval.
6. Agree that the Joint Committee will reimburse Cheshire East Council for all services provided to the Joint Committee.
7. Agree that the Section 151 Officer of Cheshire East Council be appointed the Joint Committee's Treasurer and will be consulted in the review of the Joint Committee's Reserves and Treasury Management policies scheduled for January 2013 and Financial Regulations in June 2013.
8. Note that the auditors appointed by the Audit Commission are retained following the transfer to Cheshire East Council.
9. Approve the TUPE transfer of staff to Cheshire East Council anticipated to take place on 1st April 2013 and meet the additional travel costs incurred by employees over a period of four years.
10. Request Cheshire East Council to enter into a lease for five years on behalf of the Joint Committee at the earliest opportunity (preferably before 1st January 2013) with a view to premises being operational by end of March 2013.
11. Request Cheshire East Council to assist the Joint Committee in identifying governance arrangements which continue to promote the independence of the Adjudicators, support the arms length nature of the Joint Committee and facilitate future growth.
12. Record its thanks to Manchester City Council and Cheshire East Council for their assistance in effecting this transfer.

FINANCIAL CONSEQUENCES

Provision has been made for the move to Cheshire East Council in the 2012/13 budget and will be reflected in future budgets.

CONTACT OFFICERS

Louise Hutchinson, PATROL Headquarters, Barlow House, Minshull Street, Manchester M1 3DZ

1. BACKGROUND

- 1.1 The Joint Committee has been established to enable councils undertaking civil parking enforcement to exercise their functions under Section 81 of the Traffic Management Act 2004 and Regulations 17 and 18 of the Civil Enforcement of Parking Contraventions (England) General Regulations 2007. These functions are exercised jointly with other councils in accordance with the requirements of Regulation 16 of the civil Enforcement of Parking contraventions (England) General Regulations 2007. In Wales, the Regulations are The Civil Enforcement of Parking Contraventions (Penalty Charge Notices, Enforcement and Adjudication (Wales) Regulations 2008. Regulations 17 and 18 are mirrored by Regulations 9 and 10 in Wales, Regulations 16 in England is Regulation 10 in Wales
- 1.2 Because the Joint Committee does not have corporate status and therefore cannot itself enter into contracts, one of the constituent councils is required to act as Lead Authority, which in practice involves being host authority, to enable goods and services to be provided to and on behalf of the Joint Committee. The Lead Authority provides such goods and services as the PATROL Adjudication Joint Committee (PATROLAJC) may from time to time determine (Schedule 6 attached)
- 1.3 Schedule 6 of the PATROLAJC Agreements sets out the terms and conditions of the arrangement between the participating authorities and the Lead Authority. The Agreement includes the provision of a review of the Lead Authority arrangements every five years.
- 1.4 Manchester City Council gave formal notice of their intention to relinquish the role of Lead Authority in January 2012. The current five year tenure concludes in 2013.
- 1.5 The PATROL Adjudication Joint Committee Executive Sub Committee at their meeting in September 2012 were informed of the decisions of Cheshire East Council's Cabinet meeting of 17 September in relation to undertaking the role of Lead/Host Authority and resolved that Cheshire East Council would be formally nominated at the next meeting of the PATROL Adjudication Joint Committee.
- 1.6 Section 4 (attached) of the PATROLAJC Agreement sets out the arrangements for varying the terms of the appointment and for terminating the agreement. Section 4.2 states "The Terms of Appointment of the Lead Authority may be varied at any time by an agreement in writing between

the PATROLAJC and the Lead Authority. In the absence of such agreement, the terms set out in Schedule 6 will apply.

- 1.7 The revised Terms of Appointment will be evidenced by a Service Level Agreement between the Joint Committee and Cheshire East Council to be presented for approval to the PATROLAJC Executive Sub Committee in January 2013.
- 1.8 The PATROLAJC Agreement defines "Lead Officer" as the Officer of the Lead Authority to whom functions are delegated pursuant to the Deed of Arrangements and the Standing Orders of the PATROLAJC (Schedule 4)
- 1.9 The current PATROLAJC Standing Orders (Schedule 4 (24)) interprets the Lead Officer as the Chief Executive of the Lead Authority or such Officer of the Lead Authority nominated by him. For the purposes of protecting the integrity and independence of the Tribunal, the Joint Committee is recommended to request the Chief Executive to nominate the Head of Service as the Lead Officer with functions delegated from the Joint Committee.
- 1.10 The Joint Committee reviews its Standing Orders on an annual basis and it is recommended that this nomination is reflected at the annual review in June 2013.

2. GOVERNANCE

- 2.1 The Joint Committee will review under separate cover a Memorandum of Understanding between the Adjudicators and the Joint Committee. The Adjudicators and Joint Committees are committed to a fair adjudication service for appellants including visible independence of adjudicators from the authorities in whose area they are working. The purpose of the Memorandum of Understanding is to clarify the relationship between the Adjudicators and the Joint Committees and the shared requirements to preserve judicial independence.
- 2.2 The Memorandum of Understanding will inform the review of the Schemes of Delegated Functions, the Service Level Agreement between the Joint Committee and Cheshire East Council and the annual review of Standing Orders.

3. FINANCIAL ASSURANCE

- 3.1 Cheshire East Council will be reimbursed for all services provided to the Joint Committee in accordance with the provisions of the PATROLAJC Agreement..
- 3.2 The Service Level Agreement will be developed between the Joint Committee and Cheshire East Council, identifying services to be provided by Cheshire East Council and arrangement for reimbursement which will be reviewed on an annual basis.
- 3.3 The Section 151 Officer of Cheshire East Council will be appointed as the Joint Committee's Treasurer. The Joint Committee reviews its Reserves and Treasury Management Policy in January each year and its Financial Regulations in June each year. The Treasurer will be consulted on these matters.
- 3.4 For audit purposes, the Joint Committee is classified as a small body i.e. with income or expenditure below £6.5 million as prescribed by the Accounts and Audit (England) Regulations 2011. This limited assurance external audit is currently undertaken by BDO LLP and following consultation with the Audit Commission, BDO LLP will continue to provide this service following the move to Cheshire East.

4. PRACTICAL ARRANGEMENTS

- 4.1 The Head of Service is working with Officers from Cheshire East Council and Manchester City Council to develop a detailed programme to support the Traffic Penalty Tribunal being operational from premises in Cheshire East by the 31st March 2013.
- 4.2 As part of the Joint Committee's Reserves Policy, a sum has been set aside to remove any financial liability on the part of Cheshire East Council should the Joint Committee require an early withdrawal from the lease. Suitable premises have been identified in Wilmslow which require refurbishment.
- 4.2 The move to Cheshire East Council will involve staff transferring from an office in central Manchester to Wilmslow, Cheshire. This will be undertaken in accordance with TUPE regulations. It is anticipated that this will take place on 1 April 2013. It is proposed that Joint Committee adopt the "sending" council's (i.e. Manchester City Council) policy in relation to meeting the additional travel costs incurred by staff over a period of four years.

5. RECOMMENDATIONS

The Joint Committee is recommended to:

1. In accordance with the PATROL Adjudication Joint Committee (PATROLAJC) Agreement, appoint Cheshire East Council as Lead Authority (to be known for day to day purposes as the Host Authority) to the Joint Committee with effect from 1st April 2013 for a period of five years to 31 March 2018. The commencement date will be preceded by a phased transition to enable premises to be commissioned by 31 March 2013
2. Agree to new Terms of Appointment of the Lead Authority being negotiated between the Joint Committee and the Lead Authority in accordance with the PATROLAJC Agreement, such new Terms of Appointment to be in the form of a Service Level Agreement between the Joint Committee and the Lead Authority to be presented for approval to the PATROLAJC Executive Sub Committee in January 2013.
3. Agree that the Service Level Agreement will be informed by the Memorandum of Understanding between the Adjudicators and the Joint Committee, with both documents being reviewed annually.
4. Request the Chief Executive of Cheshire East Council to nominate the Head of Service to undertake the role of Lead Officer in accordance with the PATROLAJC Agreement and a Scheme of Delegation from the Joint Committee.
5. Agree that a Scheme of Delegated Functions will be presented to the June 2013 meeting of the PATROL Adjudication Joint Committee for approval.
6. Agree that the Joint Committee will reimburse Cheshire East Council for all services provided to the Joint Committee.
7. Agree that the Section 151 Officer of Cheshire East Council be appointed the Joint Committee's Treasurer and will be consulted in the review of the Joint Committee's Reserves and Treasury Management policies scheduled for January 2013 and Financial Regulations in June 2013.
8. Note that the auditors appointed by the Audit Commission are retained following the transfer to Cheshire East Council.
9. Approve the TUPE transfer of staff to Cheshire East Council anticipated to take place on 1st April 2013 and meet the additional travel costs incurred by employees over a period of four years.

10. Request Cheshire East Council to enter into a lease for five years on behalf of the Joint Committee at the earliest opportunity (preferably before 1st January 2013) with a view to premises being operational by end of March 2013.
11. Request Cheshire East Council to assist the Joint Committee in identifying governance arrangements which continue to promote the independence of the Adjudicators, support the arms length nature of the Joint Committee and facilitate future growth.
12. Record its thanks to Manchester City Council and Cheshire East Council for their assistance in effecting this transfer.

BUS LANE ADJUDICATION SERVICE JOINT COMMITTEE AGREEMENT

SECTION 4

1. Lead Authority

- 1.1. The Participating Authorities hereby appoint Manchester to act as Lead Authority for the purposes specified in and on the terms set out in Schedule 6 to this Agreement and the Executive of the Manchester City Council agree to the appointment on these terms.
- 1.2. The terms of appointment of the Lead Authority may be varied at any time by an agreement evidenced in writing between the BLASJC and Lead Authority but in the absence of such agreement, the terms set out in Schedule 6 shall apply to any successor to Manchester as Lead Authority.
- 1.3. The Lead Authority may elect to relinquish its role as such by giving not less than 12 months notice in writing to the BLASJC (or such other period as may be agreed between the Lead Authority and the BLASJC) such notice to take effect on 1 April the following year and the BLASJC shall meet as soon as is practicable after such notice has been given to appoint a new Lead Authority from the Participating Authorities.
- 1.4. The appointment of a Participating Authority as Lead Authority may be terminated by the BLASJC by the giving to that Council of not less than 12 months (or such other period as may be agreed

between the Lead Authority and the BLASJC) notice in writing such notice to take effect on 1 April the following year and the BLASJC shall as expeditiously as possibly appoint as the new Lead Authority any other Participating Authority

- 1.5. On the termination of the appointment of a Participating Authority as Lead Authority that Participating Authority and the Participating Authority which has been nominated as the new Lead Authority shall take such measures as are necessary to ensure the efficient and expeditious transition of responsibility (including transfer of staff) between them.

SCHEDULE 6

TERMS AND CONDITIONS OF THE ARRANGEMENT BETWEEN THE PARTICIPATING AUTHORITIES AND THE LEAD AUTHORITY

1. The Participating Authorities individually in accordance with their own constitutional arrangements and as part of their arrangements for the establishment of the BLASJC hereby agree that the Lead Authority shall provide such goods and services to the BLASJC as the BLASJC may from time to time determine.
2. Without Prejudice to the generality of the foregoing clause the Lead Authority shall provide staff for the performance on behalf of the

BLASJC of the functions which are the subject of these arrangements and may in particular:

- a) appoint, dismiss and discipline staff
- b) supply pay and rations in respect of the Bus Lane Adjudication Service
- c) negotiate and execute contracts including but not limited to contracts for Works
- d) negotiate and execute property transactions including but not limited to leases licenses and wayleaves
- e) give and procure Committee administration support and professional advice including but not limited to legal financial surveying and personnel matters
- f) provide such other goods and services as may be agreed with the Lead Authority and authorised by the BLASJC in writing

3. The BLASJC shall reimburse the Lead Authority all costs and charges incurred including VAT correctly levied in the provision of its services as Lead Authority within 30 days of receipt of invoices submitted by the Lead Authority
4. The consideration payable to the Lead Authority shall be subject to audit by the BLASJC and the Lead Authority shall upon request make available all accounts records and other documents reasonably required for such purpose

5. The Lead Authority shall take all reasonable steps to protect the interests of the BLASJC and to keep the BLASJC fully informed of all acts or decisions undertaken by the Lead Authority under this arrangement.
6. The BLASJC shall indemnify the Lead Authority against all claims demands costs and expenses arising out of the giving of professional advice or its actions as Lead Authority save that arising from any negligent act or omission of the Lead Authority or its employees.
7. The BLASJC and the Lead Authority shall jointly review the Lead Authority's role as such at the end of each five year period calculated from the date of this Agreement UNLESS and until either party exercises their right to terminate the appointment of the Lead Authority pursuant to Clauses 4.4 or 4.5 of this Agreement.
8. The Lead Authority may in pursuance of these arrangements and Section 120(4) of the Local Government Act 1972 acquire and dispose of land on behalf of the Participating Authorities.
9. No property belonging to the Lead Authority including staff and premises provided by the Lead Authority for the use of the BLASJC shall thereby become part of the assets of the BLASJC unless specifically agreed in writing between the Lead Authority and the BLASJC and for the avoidance of doubt neither the BLASJC nor any of the Participating Authorities shall acquire or be entitled to claim or seek to enforce any rights as to possession or otherwise in respect

thereof and possession of the said property shall be delivered when
required by the Lead Authority.

REPORT FOR INFORMATION

SUBJECT: TERMS AND CONDITIONS – PART TIME ADJUDICATORS

REPORT OF: The Chief Adjudicator

PURPOSE OF REPORT

To inform the Joint Committee of a revision of the terms and conditions of the part-time adjudicator ahead of the impending recruitment exercise.

RECOMMENDATIONS

1. To note and approve the review of terms and conditions for part time adjudicators.

FINANCIAL CONSEQUENCES

Provision has been made for the forthcoming recruitment exercise

CONTACT:

Caroline Sheppard, Chief Adjudicator, Traffic Penalty Tribunal, Barlow House,
Minshull Street, Manchester, M1 3DZ Tel: 0161 242 5252

1. BACKGROUND

- 1.1 One of the functions delegated by the Joint Committee to the Chief Adjudicators is:

The determination of the terms and conditions applying to adjudicators having regard to principles established for such judicial appointments and conduct by the Lord Chief Justice and Lord Chancellor.

- 1.2 The last competition for appointment of new adjudicators was in 2003.

- 1.3 In preparation for the impending competition for the appointment new adjudicators the Chief Adjudicator has reviewed the terms and conditions of part-time adjudicators. This has been done having regard to the requirements that apply, either by statute, or Ministry of Justice policy, to similar tribunal appointments. Member are asked to note and approve in particular the following:

2. RELEVANT QUALIFICATION

- 2.1 The TMA provides that adjudicators must hold a relevant legal qualification which means holding a qualification as a solicitor or barrister or a Fellow of the Chartered Institute of Legal Executives for a period of at least five years a barrister,

- 2.2 Adjudicators appointed by the Joint Committees are not subject to the Tribunals, Courts and Enforcement Act (TCE) 2007, which has introduced the 'judicial-appointment eligibility condition'. This means that in order to be eligible for appointment as an adjudicator, an adjudicator must not only be in possession of the relevant qualification, but must also have been engaged in 'law related activity' whilst holding that qualification. It is therefore expedient to adopt as a matter of policy the condition that the candidates for appointment, in addition to the relevant legal qualification for the requisite period that whilst holding that qualification the candidate has been gaining legal experience.

3. NATIONALITY

- 3.1 In accordance with statutory requirements that apply to other tribunal appointment applicants for an appointment must be a citizen of:

- the United Kingdom; or
- another Commonwealth country; or
- the Republic of Ireland.

4 DISQUALIFICATION

4.1 While there are no statutory disqualifications for appointment as an adjudicator and in particular the House of Commons Disqualification Act 1975 does expressly apply to this office, the following are not be suitable for appointment:

- An elected MP
- A Councillor of any Local Authority in England (including London) and Wales
- A lawyer in the service of any local authority in England (including London) and Wales, or who has within the period of two years immediately prior to the request for the Lord Chancellor's consent to that candidate's appointment, whether or not the lawyer has been engaged in legal activity associated with parking or traffic enforcement services;
- A lawyer who employed by, acts for or advises any company or organisation engaged in TMA enforcement services to or on behalf of a local authority in England (including London) and Wales may be considered ineligible for appointment as an adjudicator depending on the nature to the work undertaken for the company and its client local authority.

5. UPPER AGE LIMIT

5.1 The current condition relating that an appointment will not continue beyond the age of 70 will continue. The government reasons for this policy are set out in Appendix 1. Precisely the same operational reasons apply to the Traffic Penalty Tribunal adjudicators. In particular the arguments set out in paragraphs 7- 9 of the appendix apply to adjudicators as to other jurisdictions.

5.2 Paragraph 10 of the appendix may, in exceptional circumstances, and for business operational reasons may apply.

5.3 Members are requested in particular to note and approve that the existing upper age limit in existing adjudicators' terms and conditions continues to apply and is applied to future appointments to reflect the age limit that is applied by the Lord Chancellor to other tribunal appointments, either as a consequence of statutory provisions or as a matter of policy.

6. RECOMMENDATIONS

1. To note and approve the review of terms and conditions for part time adjudicators.

Ministry of Justice explanation for applying a retirement age of 70 to judicial office holders.

1. The recent abolition of the Default Retirement Age (DRA) does not change retirement practices in relation to judicial office holders.
2. The DRA is being abolished for employees and in general employees can only be made to retire if the employer can objectively justify that action. But judicial office holders are not employees – judicial office holders are in a special constitutional position. They must be free from outside influence and are not subject to external control in the same way that employees are. So judicial office holders are not subject to individual assessments regarding capacity and ability when determining retirement but are subject rather to an independent and impartial framework based on a statutory retirement age of 70.
3. It has for some time been the general policy of consecutive Lord Chancellors that judicial office holders should not sit beyond 70, unless they have a reserved right to continue to a later age. The Government's view is that this is justified objectively on a number of grounds, and is consistent with existing equality legislation.
4. The legislation which sets out the retirement age for the majority of judicial office holders is the Judicial Pensions and Retirement Act 1993 (JUPRA). Section 26 of that Act states that a person holding any offices specified in Schedule 5 to that Act shall vacate that office on the day on which he or she obtains the age of 70 or such lower age as may be specified for the purpose in the enactments and instruments relating to that office, whenever passed or made. Part 5 of the Equality Act 2010 (in particular sections 49 to 50) does contain prohibitions against discriminating upon certain grounds, including age, which apply to judicial office holders. However, Paragraph 1 of Schedule 22 to that Act provides that where there is a statutory authority for an act then it will not constitute age discrimination for the purposes of Parts 3 to 7. The retirement date of 70 set in JUPRA is therefore covered by this statutory exemption.
5. Of course, not all judicial office holders are covered by the provisions in JUPRA. For many of these other judicial office holders, their retirement age is set out in their terms and conditions, or instrument of appointment. Sections 13(2) and 19(2)d of the Equality Act, dealing respectively with direct and indirect discrimination, clarify how a mandatory retirement age of 70 for these judicial office holders is both lawful and appropriate. The Government's view is that this constitutes "*a proportionate means of achieving a legitimate aim*".
6. There are a number of powerful reasons underpinning the setting of the mandatory retirement age at 70.

7. Judicial independence is protected by ensuring that the Executive does not have a role in determining, on an ad hoc basis, the retirement age of any individual judge. By applying an objective and impersonal framework, the risk of any perception by the public that a decision about whether or not to retain a judge in service could be influenced by the nature of his / her decisions while sitting on the Bench is greatly diminished. The Executive is therefore seen to be not unduly interfering with the independent functioning of the judiciary.
8. Further, in order to maintain an effective justice system, the Government needs to ensure that it has the right number of judicial office holders at the right levels of seniority across the various jurisdictions in order to meet the changing demands placed on those jurisdictions. It is essential that the Government is able to recruit at regular intervals a sufficient number of judges to meet that demand. Having some predictability over when existing judges leave office, through retirement, helps to generate reasonably accurate forecasts of future need and establish plans for the recruitment of replacements.
9. It is also important to ensure public confidence in the justice system is maintained. In deciding upon a mandatory retirement age of 70 in JUPRA, Parliament saw this age as striking a reasonable balance between enabling more mature judges to continue to make a contribution and the public interest in ensuring a Judiciary which is fully effective in discharging its heavy responsibilities.
10. Exceptionally, where it has been identified to be in the public interest, judicial office holders in most jurisdictions can have their age of retirement extended beyond the age of 70 for periods not exceeding 1 year at a time and not beyond the day upon which they attain the age of 75. In these exceptional circumstances 'public interest' is interpreted to mean that a clear business need has been identified.
11. Over the last year there have been various suggestions voiced in both Houses of Parliament, and elsewhere, that to extend the mandatory retirement age of judicial office holders might prove beneficial to the justice system. The Government has since considered the merits of such a change, following discussions with members of the senior judiciary and others. For the immediate future the Lord Chancellor remains convinced that the current mandatory retirement regime for judicial office-holders supports the legitimate aim of a justice system which is independent, fair and efficient.