SCOTTISH STATUTORY INSTRUMENTS

2016 No. 409

ROAD TRAFFIC

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

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Coming into force - -	*23rd January 2017*

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17. The Register

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

PART I

Preliminary

Citation and commencement

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

Interpretation

2.—(1) In these Regulations—

"the Act" means the Road Traffic Act 1991;

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

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

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

"hearing" means an oral hearing;

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

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

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

"appellant" means the person making the appeal;

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

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

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

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

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

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

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

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

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

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

PART II

Procedure relating to Appeals

Making an appeal

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

(2) A notice of appeal—

(a) must state the full name and address of the appellant;

(b) may specify some other address as being the address to which the appellant wishes documents to be sent to him or her in connection with the appeal;

(c) must state the date and reference number of the disputed decision; and

(d) may include any representations which the appellant desires to make in addition to the original representations.

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

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

Action upon receipt of notice of appeal and copy

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

(a) send an acknowledgement of receipt to the appellant;

(b) enter particulars of the appeal in the register; and

(c) send to the parking authority a copy of the notice of appeal and any direction extending the time limit for appealing.

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

(a) the original representations;

(b) the relevant penalty charge notice (if any) issued under section 66(1) of the Act; and

(c) the notice served under section 71(6) or (as the case may be) paragraph 2(7) of schedule 6 of the Act.

Further representations

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

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

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

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

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

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

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

Power to require attendance of witnesses

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

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

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

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

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

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

Disposing of an appeal without a hearing

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

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

(a) the party who made the request withdraws his or her request before notice of a hearing has been sent to the other party under regulation 8; or

(b) both parties have subsequently consented to the appeal being disposed of without a hearing.

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

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

Notice of time and place of hearing

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

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

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

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

Procedure at a hearing

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

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

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

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

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

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

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

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

(9) At the hearing of an appeal—

(a) the parties are entitled to give evidence, to call witnesses, to question any witnesses and to address the adjudicator both on the evidence and generally on the subject matter of the appeal; and

(b) the adjudicator may receive evidence of any fact which appears to him or her to be relevant notwithstanding that such evidence would be inadmissible in proceedings before a court.

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

Decisions on appeals

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

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

Review of adjudicator's decision

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

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

(b) a party who had failed to appear or be represented at a hearing had good and sufficient reason for his or her failure to appear;

(c) where the decision was made after a hearing, new evidence has become available since the conclusion of the hearing the existence of which could not have been reasonably known of or foreseen;

(d) where the decision was made without a hearing, new evidence has become available since the decision was made, the existence of which could not have been reasonably known of or foreseen; or

(e) the interests of justice require such a review.

(2) An adjudicator has power, on the application of a party, to review and revoke or vary any interlocutory decision.

(3) An application under this regulation must be made to the proper officer within 14 days after the date on which a copy of the entry of the decision was sent to the parties and must state in full the grounds for that application.

(4) The parties have the opportunity to be heard on any application for review under this regulation and if, having reviewed the decision, the adjudicator directs the decision to be revoked, he or she shall substitute such decision as he or she thinks fit or order a redetermination by either the same or a different adjudicator.

(5) Regulation 10 applies to a decision under paragraph (1) as it applies to a decision made on the disposal of an appeal.

Expenses

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

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

(b) against the parking authority where he or she considers that the disputed decision was wholly unreasonable.

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

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

Conjoining of appeals

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

(a) some common question of law or fact arises in both or all the appeals; or

(b) for some other reason it is desirable to make an order under this regulation,

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

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

Miscellaneous powers of the adjudicator

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

(a) extend the time appointed by or under these Regulations for doing any act notwithstanding that the time appointed may have expired;

(b) if the appellant at any time gives notice of the withdrawal of his or her appeal, dismiss the proceedings;

(c) if the parking authority consents to an appeal being allowed, allow the appeal;

(d) if both or all of the parties agree in writing on the terms of a decision to be made by an adjudicator, decide accordingly; or

(e) adjourn a hearing.

(2) The powers of the adjudicator conferred by—

(a) these Regulations (other than regulation 11);

(b) section 72(1)(b) of the Act; and

(c) paragraph 5(1)(b) of schedule 6 of the Act,

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

Clerical errors

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

Sending of documents

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

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

(a) delivered to him or her personally;

(b) left at his or her proper address;

(c) sent to him or her at that address by post or through a document exchange; or

(d) transmitted to him or her by fax or other means of electronic data transmission in accordance with paragraphs (3), (4) and (5).

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

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

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

(6) Regulations 3(4) and 5(4)—

(a) are, in the case of a document transmitted by fax, satisfied if a copy of the signature of the relevant person appears on the transmitted copy; and

(b) do not apply in relation to a document transmitted by other means of electronic data transmission.

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

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

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

(a) the proper address of the appellant is the address specified in his or her notice of appeal pursuant to regulation 3(2)(b) or (if no such address is so specified) the address stated pursuant to paragraph (2)(a) of that regulation; and

(b) the proper address of the parking authority in proceedings in which it is the respondent is such address as the parking authority from time to time specifies in a notice sent to the proper officer as being the proper address in all such proceedings.

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

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

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

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

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

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

PART III

The Register

The Register

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

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

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

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

H YOUSAF
Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
6th December 2016

(**a**) 1978 c.30.

EXPLANATORY NOTE

(This note is not part of the Regulations)

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

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

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