POLICY NOTE

THE ROAD TRAFFIC (PERMITTED PARKING AREA AND SPECIAL PARKING AREA) (EAST LOTHIAN COUNCIL) DESIGNATION ORDER 2016

SSI 2016/407

THE PARKING ATTENDANTS (WEARING OF UNIFORMS) (EAST LOTHIAN COUNCIL PARKING AREA) REGULATIONS 2016

SSI 2016/408

THE ROAD TRAFFIC (PARKING ADJUDICATORS) (EAST LOTHIAN COUNCIL) REGULATIONS 2016

SSI 2016/409

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

Policy Objectives and background

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

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

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

5. To date, 15 Scottish local authorities have now introduced DPE within their areas. Under these arrangements, local authorities seeking DPE powers need to ensure that the operation should insofar as possible be self-financing. Section 55 of the Road Traffic Regulation Act 1984 provides that any deficit accrued by a local authority as a result of the authority's

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

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

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

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

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

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

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

Consultation

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

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

Request from the Rural Economy and Connectivity Committee for Information

11. Following the laying of Highland Council's SSIs for DPE powers in September, there was a substantive discussion around these Orders (negative procedure) at the Rural Economy

and Connectivity Committee on 28 September 2016. The discussion was essentially about the DPE regime in the generality, rather than Highland Council's DPE regulations.

12. The discussion primarily revolved around how much revenue is being generated from DPE by the relevant local authorities, how it is accounted for and what is it being used for. There was some discussion among the members about potential difficulties in obtaining the information the Committee is interested in from local authorities, which led to some general discussion about potential annulment of the regulations then at hand or future regulations. The Committee wrote to the Scottish Government on 3 October 2016 requesting specific information about the number of PCNs issued, income generated by the different DPE operations and how the money is being used. We wrote to the Committee on 17 October 2016, in which we advised that we would provide a detailed report that provided a response to its specific questions. A report was issued to the Committee on 28 November 2016.

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

Business and Regulatory Impact Assessment

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

Financial Effects

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

Roads Policy Team
Transport Scotland

29 November 2016