

**NATIONAL PARKING ADJUDICATION SERVICE JOINT COMMITTEE
MEETING OF THE EXECUTIVE SUB COMMITTEE**

REPORT FOR RESOLUTION

DATE: 29th January 2008

AGENDA ITEM Number 6

SUBJECT: Introduction of Traffic Management Act 2004

REPORT OF: Lead Officer on behalf of the Advisory Board

PURPOSE OF REPORT

Following an Urgency Report presented to the Chair in November 2007, to inform members of the matters in that report and update them on progress.

RECOMMENDATIONS

It is recommended that the Joint Committee:

- (i) Confirm the contents and recommendations of the Urgency Report dated 23 November 2007 (Appendix 1)
- (ii) Notes progress in relation to the Independent Review of Parking Documentation.
- (iii) Notes progress in relation to the PATROL (Parking and Traffic Regulations Outside London) web site.

FINANCIAL CONSEQUENCES FOR THE REVENUE AND CAPITAL BUDGETS

The commission of Stephen Sauvain QC will incur his standard charges. The transfer of public information from the NPAS web site to the PATROL and associated literature will form part of the overall re-branding budget. It is not anticipated that these initiatives will place an undue burden on the budget for 2007/08 and (given the increased budgetary pressures associated with general TMA preparation expenditure) if required, reserves (See Item 9).

CONTACT OFFICER

Louise Hutchinson, NPAS Headquarters, Barlow House, Minshull Street, Manchester. Tel: 0161 242 5270

1. Introduction

- 1.1 The Traffic Management Act 2004 (TMA) will come into force on 31 March 2008. This will represent a significant change for the tribunal, the Joint Committee and for local authorities. This paper sets out the steps that are being taken to prepare for this change.

2. Urgency Report

- 2.1 A copy of the Urgency Report is attached for reference at Appendix 1. Members are asked to confirm the contents and recommendations of that report.

3. Progress in relation to the Independent Review of Parking Documentation.

- 3.1 The Joint Committee's leadership in this respect has received positive feedback from councils who have are preparing for 31st March.
- 3.2 The Review Committee held its inaugural meeting on 4th January and we are advised that the first piece of specimen documentation, the Regulation 9 Penalty Charge Notice (PCN), will be available before the Joint Committee meets. The Chair, Stephen Sauvain QC, has advised that the Review Committee will swiftly move on to the Notice to Owner and Regulation 10 PCN.
- 3.3 Given the timescales involved, as each recommended specimen is released by the Review Committee, it will be circulated to Parking Managers and Legal Officers at each council. The Review Committee's final report will be presented to the Joint Committee.

4. Progress in relation to the PATROL (Parking and Traffic Regulations Outside London) web site.

- 4.1 Outline plans for the web site were shared with Parking Managers at a series of Council User Groups and received positive feedback. Work is now underway on transferring the information on the current NPAS Web Site which is not directly related to the Tribunal to the PATROL (Parking and Traffic Regulations Outside London) web site. The Chairs of the Council User Groups will be consulted on the web site's content.
- 4.2 In conjunction with the web site and in recognition that not everyone has internet access, a leaflet which is downloadable from the web site will also be printed and distributed to all councils. The leaflet will set out the

various stages of the enforcement process and will have benefits for both motorists and councils in terms of increasing public awareness and understanding.

- 4.3 PATROL represents a significant development in national public information on the parking and traffic enforcement process and demonstrates more than 200 councils working together to provide accessible general information with links to their own parking web sites. This presents the Joint Committee with a significant public relations opportunity to coincide with the introduction of the Traffic Management Act 2004 on 31st March.

**NATIONAL PARKING ADJUDICATION SERVICE JOINT COMMITTEE
URGENCY REPORT FOR RESOLUTION**

DATE: 23 November 2007

SUBJECT: Joint Committee – Review of Parking Documentation,
Provision of Public Information and Title for Joint
Committee

REPORT OF: Head of Service

PURPOSE OF REPORT

To request the Chair of the Joint Committee to note the contents of the report and confirm approval of the following recommendations.

RECOMMENDATIONS

It is recommended that the Joint Committee:

- (i) Commission Stephen Sauvain QC to chair an independent Review Committee to consider parking documentation and notices in accordance with the attached terms of reference Appendix 1.
- (ii) Undertake to provide public information on parking enforcement through a web site under the title of PATROL (Parking and Traffic Regulations Outside London)
- (iii) Present a full report to the next meeting of the Joint Committee.

FINANCIAL CONSEQUENCES FOR THE REVENUE AND CAPITAL BUDGETS

The commission of Stephen Sauvain QC will incur his standard charges. The transfer of public information from the NPAS web site to the PATROL will form part of the NPAS re-branding budget. It is not anticipated that these initiatives will place an undue burden on the budget.

CONTACT OFFICER

Louise Hutchinson, NPAS Headquarters, Barlow House, Minshull Street, Manchester. Tel: 0161 242 5270

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Chair of Joint Committee

Date 23 November 2007

1. Introduction

The Traffic Management Act 2004 (TMA) will come into force on 31 March 2008. This introduces a requirement for revised parking documentation for local authorities. The new regulations are complex and highlight the importance of accessible public information.

2. Background

2.1 There has been a history of poor documentation on the part of some councils giving rise to critical decisions from Adjudicators and findings that the deficiencies have rendered the PCN unenforceable.

2.2 There has been a significant increase in appellants relying on defective documentation as their ground of appeal, even though the facts support a finding that a parking contravention occurred. Adjudicators do not find these submissions attractive, but nevertheless must have regard to the integrity of the statutory process.

2.3 The contents of a PCN issued under the RTA was considered by the High Court in *R v the Parking Adjudicator ex parte Barnet Council* where it was found that a PCN that did not comply with the statutory requirements was void and unenforceable

2.4 The Local Government Ombudsman issued a Special Report that was critical of some authorities' parking documentation, particularly Notices to Owner that erroneously express the law so as to deter representations and Notices of Rejection that expressly fetter the council's discretion.

3. The New Parking Provisions contained in Part 6 of the Traffic Management Act 2004 and its consequent Regulations

3.1 The TMA has resulted in two sets of Regulations, both of which need to be read with reference to the Act itself and with reference to each other. The draft Regulations are more long-winded and obtusely worded than the equivalent RTA provisions and are complex to interpret.

3.2 Following the *Barnet* judgment Council lawyers are naturally cautious of producing plain English documents which might be subject to criticism.

3.3 Draft documents have been mocked up using the language of the draft Regulations and as a result unacceptably lengthy and incomprehensible documents have emerged. If these were used the purpose of the scheme and the administrative justice values of openness and transparency would be

frustrated. On a practical level, incomprehensible documents will result in more queries and telephone calls from the recipients to the enforcement authority and a reluctance to settle the penalty charge.

3.4 Taking these points into consideration the inevitable conclusion is that there needs to be a set of standard, plain English documents and notices for use by the enforcement authorities outside London in performing their functions under the TMA.

4. The Role of the Joint Committee

4.1 Despite requests from councils, the DfT do not consider it their role to issue standard documents in either the statutory guidance or the operational Guidance. This contrasts with the approach taken by the Home Office which regularly provides standard forms as part of their Regulations for the purpose of enforcement of those regulations (e.g. the Owner Liability Regulations which establish the rules pertaining to hired vehicles)

4.2 The Outside London Joint Committee, however, comprises over 200 constituent councils is the only body in a position to undertake this initiative for the benefit of its members and their customers/citizens.

4.3 The London Joint Committee (now known as London Councils) has consistently issued common public information

4.4 There is a need for information and documents to be prepared specifically for Outside London because

- parking and traffic regulations outside London stem from different sections of the Road Traffic 1984 Act resulting in parking contraventions being expressed in different terminology from London contraventions.
- the TMA enforcement powers are predicated on these sections and differ from London
- differential charges apply at different levels outside London

4.5 Vehicle owners will find it helpful to immediately differentiate between London documentation and outside London documentation.

4.6 To respond to the expanding remit under the Traffic Management Act 2004, the Joint Committee will have a working title of The Joint Committee of Local Authorities in England (Outside London) and Wales Undertaking Civil Enforcement of Parking and Traffic Regulations, referred to as the Outside London Joint Committee.

5. The Sauvain Report

- 5.1 The proposal is for the Outside London Joint Committee to commission an independent Review into documents, notices and forms required by the TMA and associated Regulations. Stephen Sauvain QC, editor of the Highways Encyclopedia and the foremost barrister in this field has agreed to chair the Review Committee which will be commissioned in accordance with the Terms of Reference enclosed at Appendix A.
- 5.2 Adjudicators will not be represented on the Review Committee. However the Review Committee will receive copies of judgments where statutory documents have been examined or criticized.
- 5.3 The Chief Adjudicator welcomes this Joint Committee initiative to achieve a more consistent approach to enforcement and appeal documentation outside London in a way which is easily understood by the motorist.

6. Public Information

- 6.1 Just as there is a need for standard documents, there is also a need for a single, easily accessible source of information about parking and traffic issues generally. In particular, this needs to explain the enforcement scheme and each stage in that process.
- 6.2 This includes, but involves much more than, the appeals process and is common to all councils. For this reason, this is not information that should be provided by the Adjudicators, but can be provided by the Joint Committee on behalf of all its member authorities.
- 6.3 The benefit for motorists is one simple to use web site explaining the enforcement process and ensuring that they are dealing with the appropriate body regarding their representations.
- 6.4 This can be done through a website with the name PATROL (Parking and Traffic Regulations Outside London) which would provide:
- Public information on the enforcement process
 - A portal providing links to access all council parking web pages providing local information
 - The HMSO/DfT website providing the legislation by the Review Committee; the standard documents produced and national information
 - The standard documents produced by the Review Committee

- 6.5 The benefit for councils is a central resource of general information on enforcement.
- 6.6 The financial implications associated with provision of public information through the web site can be achieved within the development budget for TMA as much of the work will be transferring content from one web site on to another.
- 6.7 A further development for this web site could be providing general access to Traffic Regulation Orders.

Outside London Joint Committee

Review of Parking Documentation and Notices in relation to the Traffic Management Act 2004

Terms of Reference

Background

There has been a history of poor parking documentation on the part of some local authorities giving rise to critical decisions from Adjudicators and findings that the deficiencies have rendered the Penalty Charge Notice (PCN) unenforceable.

There has been a significant increase in appellants relying on defective documentation as their ground of appeal, even though the facts support a finding that a parking contravention occurred. Adjudicators do not find these submissions attractive, but nevertheless must have regard to the integrity of the statutory process.

The content of a PCN issued under the Road Traffic Act 1991 (RTA) was considered by the High Court in *R v the Parking Adjudicator ex parte Barnet Local authority* where it was found that a PCN that did not comply with the statutory requirements was void and unenforceable

The Local Government Ombudsman issued a Special Report that was critical of some authorities' parking documentation, particularly Notices to Owner (NTO) that erroneously express the law so as to deter representations and Notices of Rejection (NOR) that expressly fetter the local authority's discretion.

The Regulations

The Traffic Management Act 2004 (TMA) has resulted in two sets of Regulations, both of which need to be read with reference to the Act itself and with reference to each other. The draft Regulations are more long-winded and obtusely worded than the equivalent RTA provisions and are complex to interpret.

- (1) The General Regulations
- (2) The Representation and Appeals Regulations (R & A Regulations)

The R & A Regulations are affirmative and it is anticipated that they will have completed their passage through the Houses of Parliament in the next two weeks. Thereafter the non-affirmative Regulations, in particular the General Regulations, will be laid and passed 28 days thereafter. However there are assurances from the Department for Transport (DfT) that they have no proposals to amend the drafts and the affirmative

Regulations were welcomed by the opposition and the liberals, therefore it is not anticipated that there will be significant amendments.

Following the *Barnet* judgment Local authority lawyers are naturally cautious of producing plain English documents which might be subject to criticism.

Draft documents have been mocked up using the language of the draft Regulations and, as a result, unacceptably lengthy and incomprehensible documents have emerged. If these were used, the purpose of the scheme and the administrative justice values of openness and transparency would be frustrated. On a practical level, incomprehensible documents will result in more queries and telephone calls from the recipients to the enforcement authority and a reluctance to settle the penalty charge.

There is a need for information and documents to be prepared specifically for Outside London because

- Parking and Traffic Regulations outside London stem from different sections of the Road Traffic 1984 Act resulting in parking contraventions being expressed in different terminology from London contraventions.
- the TMA enforcement powers are predicated on these sections and differ from London
- Differential charges apply at different levels outside London

Vehicle owners will find it helpful to immediately differentiate between London documentation and outside London documentation.

Taking these points into consideration the inevitable conclusion is that there needs to be a set of standard, plain English documents and notices for use by the enforcement authorities outside London in performing their functions under the TMA.

The Review Committee

The Outside London Joint Committee (OLJC) has commissioned an independent Review into documents, notices and forms required by the TMA and associated Regulations. Stephen Sauvain Q.C., editor of the Highways Encyclopedia who has particular experience in this field has agreed to chair the Review panel.

The composition of the Review Committee reflects the independence, impartiality and legal expertise required for such a review. Members of the Review Commission will be.

Anne Seex, Local Government Ombudsman

Professor John Raine, Institute of Local Government Studies, University of Birmingham

Sheila Rainger, Head of Campaigns, RAC

John Rushton, Managing Director, Small Back Room with expertise in design and accessibility issues

Chris Bramham, Solicitor, Leeds City Local authority

Ian Martin, Parking Manager, Sandwell Metropolitan Borough Local authority
and representing all the outside London Local authorities in the Local Authority Special Interest Group of the British Parking Association and

Graham Marsh, Parking Manager, Manchester City Local authority

Andrew Pulham, Parking Manager. East Herts District Local authority

John Satchwell, (Bournemouth Borough Local authority) Chair of Joint Committee's Advisory Board

Derek McEwen, Parking Manager, Denbighshire County Local authority

It is a matter for the Chairman as to how many meetings he wishes to hold, although he may feel that most of the liaison can be done through email. It is understood that the proposed members of the Committee are prepared to attend at least one meeting, in Manchester or London, at the Chairman's convenience.

A paper will be prepared in advance of the Review Committee considering each specimen document on a piecemeal basis and samples will be provided.

The suggested timetable for consideration of documents is

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|----|-----------------------------------|------------------------------|
| a) | Regulation 9 PCN | Early January |
| b) | Regulation 10 PCN | By 14 January |
| c) | Notice to Owner | By 31 January |
| d) | Notice of Rejection | By 14 February |
| e) | Charge Certificate & Final Report | By 29 th February |

The secretariat will be provided by the Joint Committee with liaison through Jackie Gloag who may be contacted on 0161 242 5277. The Secretariat will coordinate any submission of documents to the Review Committee and convene meetings as required.

Terms of Reference

The Review Committee is requested to:

1. Review the parking documentation used by local authorities outside London in the course of enforcement of parking and traffic regulation.
2. Provide a brief overview of issues that have arisen under the RTA scheme in terms of local authority notices and documents.
3. Make recommendations for specimen documents to be used by local authorities outside London for civil enforcement of parking in compliance with the requirements of the TMA and associated regulations.
4. Recommend sample standard notices and letters required by the The Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007 (Appendix 1) and The Civil Enforcement of Parking Contraventions (England) General Regulations 2007 (Appendix 2) in accordance with the following priority list:
 - (a) the Regulation 9 PCN having regard to the provisions of the Schedule of the General Regulations and Regulation 3 of the R&A Regulations.
 - (b) the Notice to Owner;
 - (c) the General Regulations PCN to comply with the three circumstances set out in Regulation 10(c) of the General Regulations.
 - (d) the Notice of Rejection;
 - (e) the Charge Certificate;
5. Provide more general recommendations regarding local authority correspondence. (The Local Government Ombudsman special report on parking documentation dealt with some of the issues that have arisen under the RTA scheme, and over the years the Adjudicators have commented upon local authority correspondence both in the form and the expressions used, particularly where it conveys the impression of fettering the local authority discretion.)
6. Undertake a staged approach to the documentation and produce recommendations as each stage of the review is completed, in accordance with the priority order set out above.
7. Produce a final report for consideration by Joint Committee by 29th February for consideration at a special meeting of the Joint Committee in March 2007 (date to be confirmed).

In making their recommendations, the Review Committee is requested to:

1. Have regard to legal requirements of the Act and the importance of documentation being easily understood by the public with communication which aims to improve people's knowledge and understanding of their rights and responsibilities in relation to parking enforcement.
2. Consider draft specimen documents, Parking Adjudicators Decisions which involve documents that have been subject to challenge or criticism and other relevant documentation including reports from the Local Government Ombudsman.
3. Take into consideration technical implications for software and print suppliers to the parking industry.

December 2007

Glossary of Terms

DfT	Department for Transport
RTA	Road Traffic Act 1991
TMA	Traffic Management Act 2004
R&A Regulations	The Representation and Appeals Regulations
PCN	Penalty Charge Notice
NTO	Notice to Owner
NOR	Notice of Rejection
OLJC	Outside London Joint Committee