



G M Hyland

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10 – 18 Adelaide Street
BELFAST
BT2 8GB
Tel: 028 9054 0400

Your reference:

Our reference: DFI/2018-0211

29 June 2018

Dear G M Hyland

Thank you for your Freedom of Information request to the Department dated 30 May 2018 regarding the Penalty Charge Notice (PCN) appeals process.

Your requests and responses as follows:

- 1. Guidance or any similar documentation provided to staff regarding challenges to Penalty Charge Notices (PCNs)/ Representations / Interpretations and legislation/legal definitions.**

Staff dealing with PCN challenges adhere to the requirements of The Traffic Management (Northern Ireland) Order 2005 which is the primary legislation for the process. I have attached a copy to the end of this letter for your convenience. The process for dealing with PCNs provides the opportunity to challenge, make formal representation and appeal to an Independent Adjudicator. It provides anyone wishing to challenge a PCN with the opportunity to submit supporting evidence which allows cases to be thoroughly investigated; whereupon the challenger is notified of the decision in writing. The process also provides any challenger who remains unsatisfied following this stage of the process with the opportunity to progress their case to independent adjudication.

Additional information about the appeals process can be found within the Department's Parking Protocol document which is available to view online at the following website <https://www.infrastructure-ni.gov.uk/publications/parking-enforcement-protocol>

This document sets out the parking enforcement protocols for Northern Ireland including local Council controlled car parks. It sets out the rules and procedures for issuing parking tickets. It also provides some general information on parking enforcement, including approach to be taken by traffic attendants and the processes in place to allow drivers to challenge any tickets which they believe may have been issued incorrectly.

The purpose of the protocol is to:

- make clear the parking enforcement requirements for each contravention and the relevant policy for traffic attendants and the Department's parking staff; and*
- provide a useful reference for any road users looking for guidance on the parking enforcement policy.*

2. Number of challenges received each of last 3 financial years

Year	Number of challenges
2015/16	27,318
2016/17	28,553
2017/18	27,497

3. Number of challenges allowed in each of last 3 financial years

Year	Number of challenges allowed
2015/16	14,042
2016/17	14,788
2017/18	14,930

The majority of challenges are allowed following drivers producing new supporting evidence coming to light, such as Blue Badges and parking pay and display tickets which could not be seen on display at the time PCNs were issued.

4. Any Reports or Audits of Penalty Charge Notice challenge system in last 3 years.

On 2 June 2017 the report for an Internal Audit review of PCN processing was published. I have attached a copy with names redacted to the end of this letter for your convenience. The information contained in pages 8 and 9 of the report has been withheld, as it relates to the formulation and development of government policy and therefore falls within the terms of the exemption in s35(1)(a) of the FOIA.

The Department has carried out a consideration of the public interest in relation to the disclosure of this information as required by s2(2). The Department acknowledges the public interest in openness and transparency, and demonstrates this by the disclosure of the remainder of the report. However, there is a strong public interest in allowing government policy to be formulated and developed in a safe space, prior to final determination and application. The Department considers that the stage of policy development for this information means the public interest is weighted towards withholding the information at this time.

If you are dissatisfied with the handling of your request, you have the right to ask for an internal review. Internal review requests should be submitted within two months of the date of receipt of the response to your original letter and should be addressed to:

Departmental Information Manager
Room 4.32
Clarence Court
10-18, Adelaide Street
Belfast
BT2 8GB

Please remember to quote the reference number above in any future communications.

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.

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Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Hugh Larmour', with a horizontal line underneath.

Hugh Larmour

Parking Enforcement Unit

STATUTORY INSTRUMENTS

2005 No. 1964 (N.I. 14)

NORTHERN IRELAND

The Traffic Management (Northern Ireland) Order 2005

Made - - - - 19th July 2005

*Coming into operation in accordance with Article
1(2) and (3)*

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Traffic Management

At the Court at Buckingham Palace, the 19th day of July 2005

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order in Council has been approved by resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1(1) of the Schedule to the Northern Ireland Act 2000 (c.1) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Introductory

Title and commencement

1.—(1) This Order may be cited as the Traffic Management (Northern Ireland) Order 2005.

(2) This Article, Articles 2, 3, 4(3), (4) and (7), 8, 18(1)(b) and (6), 20(2), 21(1)(b) and (8), 23(7), 24, 29 to 38 and 41 to 46, and Article 47 so far as it relates to the Road Traffic Offenders (Northern Ireland) Order 1996 (NI 10) and Articles 56 and 57 of, and Schedules 1 to 6 to, the 1997 Order shall come into operation on the expiration of one month from the day on which this Order is made.

(3) The remaining provisions of this Order shall come into operation on such day or days as the Department may by order appoint.

Interpretation

2.—(1) Subject to Article 45, the Interpretation Act (Northern Ireland) 1954 (c. 33) applies to this Order as it applies to an Act of the Assembly.

(2) In this Order—

“1997 Order” means the Road Traffic Regulation (Northern Ireland) Order 1997 (NI 2);

“adjudicator” means a person appointed under Article 29;

“charge certificate” means a statement under Article 14(2);

“the Department” means the Department for Regional Development;

“disabled person’s badge” means—

Traffic Management

(a) a badge issued, or having effect as if issued, under section 14 of the Chronically Sick and Disabled Persons (Northern Ireland) Act 1978 (c. 53); or

(b) a recognised badge within the meaning given by section 14A of that Act;

“fixed penalty notice” has the meaning given by Article 58 of the Road Traffic Offenders (Northern Ireland) Order 1996 (NI 10);

“hiring agreement” has the meaning given by Article 71(8) of the Road Traffic Offenders (Northern Ireland) Order 1996 (NI 10);

“immobilisation device” means any device or appliance which is—

(a) designed or adapted to be fixed to a vehicle for the purpose of preventing it from being driven or otherwise put in motion; and

(b) of a type approved by the Department for use for that purpose;

“notice of rejection” means—

(a) a notice under Article 9(4)(b) that the Department does not accept that a ground mentioned in Article 9(2) has been established; or

(b) a notice under Article 25(5)(b) that the Department does not accept that a ground mentioned in Article 25(4) has been established;

“notice to owner” has the meaning given by Article 6(1);

“owner”, in relation to a vehicle, means (subject to paragraph (3)) the person by whom the vehicle is kept, which in the case of a vehicle registered under the Vehicle Excise and Registration Act 1994 (c. 22) is presumed (unless the contrary is proved) to be the person in whose name the vehicle is registered;

“parking device” has the same meaning as in Article 13 or 21 of the 1997 Order;

“parking place” means a parking place (within the meaning given by Article 2(2) of the 1997 Order) which is—

(a) provided under Article 10 or 11 of the 1997 Order; or

(b) designated by an order under Article 15 of that Order;

“penalty charge notice” means a notice under Article 5 or 7;

“prescribed” means prescribed by regulations made by the Department;

“prescribed device” means a device of a description prescribed under Article 8(1)(a);

“public road” means a public road (within the meaning given by Article 2(2) of the 1997 Order) which is not a special road;

“special road” has the meaning given by Article 2(2) of the Roads (Northern Ireland) Order 1993 (NI 15);

“statutory declaration” means a declaration made by virtue of the Statutory Declarations Act 1835 (c. 62);

“statutory provision” has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954;

“traffic attendant” shall be construed in accordance with Article 3;

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“vehicle-hire firm” means any person engaged in hiring vehicles in the course of a business.

(3) The Department may by regulations provide for prescribed references in this Order to the owner of a vehicle to be construed as, or as including, references to a person prescribed under Article 4(1)(b).

(4) In determining for the purposes of any provision of this Order whether a penalty charge or other amount has been paid before the end of a particular period, it shall be taken to have been paid when it is received by the Department.

Traffic attendants

Traffic attendants

3.—(1) The Department may provide for the enforcement of contraventions specified in Schedule 1 by individuals to be known as traffic attendants.

(2) A traffic attendant must be—

- (a) an individual employed by the Department; or
- (b) where the Department has made arrangements with any person for the purposes of this Article, an individual employed by that person to act as a traffic attendant.

(3) Traffic attendants—

- (a) when exercising specified functions shall wear such uniform as the Department may determine; and
- (b) shall not exercise any of those functions when not in uniform.

(4) In paragraph (3)(a) “specified functions” means—

- (a) functions under Article 5 (issue of penalty charge notice by traffic attendant);
- (b) functions under section 14(4BA) or 14A(5) of the Chronically Sick and Disabled Persons (Northern Ireland) Act 1978 (c. 53) (enforcement powers relating to disabled persons’ badges); and
- (c) such other functions as may be prescribed.

Penalty charges

Penalty charges

4.—(1) A penalty charge is payable with respect to a vehicle involved in a contravention specified in Schedule 1—

- (a) by the owner of the vehicle; or
- (b) by such other person as may be prescribed.

(2) Schedule 1 (which specifies the contraventions for which a penalty charge is payable) shall have effect.

(3) The Department may by regulations amend Schedule 1 and regulations under this paragraph may in particular add any contravention of a statutory provision involving a vehicle, whether stationary or not.

(4) The Department may by regulations specify—

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- (a) the amounts of any specified penalty charges;
 - (b) the contraventions in relation to which any specified penalty charge is payable; and
 - (c) the percentages by which any penalty charges may be reduced or increased.
- (5) A penalty charge shall not be payable except on the basis of—
- (a) information given by a traffic attendant as to conduct observed by him; or
 - (b) a record produced by a prescribed device.
- (6) A penalty charge shall not be payable (or if paid shall be refunded) where the conduct in respect of which it was imposed is the subject of—
- (a) criminal proceedings; or
 - (b) a fixed penalty notice.
- (7) Criminal proceedings shall not be brought, and a fixed penalty notice shall not be issued, in respect of any prescribed description of conduct for which a penalty charge may be imposed.

Issue of penalty charge notice by traffic attendant or Department

5.—(1) Where a traffic attendant has reason to believe that a penalty charge is payable with respect to a stationary vehicle on a public road or in a parking place, he may—

- (a) fix a penalty charge notice to the vehicle; or
- (b) give a penalty charge notice to the person appearing to him to be in charge of the vehicle.

(2) Where a traffic attendant—

- (a) has reason to believe that a penalty charge is payable with respect to a moving vehicle on a public road; or
- (b) is prevented from issuing a penalty charge notice under paragraph (1),

the Department may issue a penalty charge notice produced by the traffic attendant.

(3) A penalty charge notice under this Article must state—

- (a) the grounds on which the traffic attendant believes that a penalty charge is payable with respect to the vehicle;
- (b) the amount of the penalty charge which is payable;
- (c) that the penalty charge must be paid within 28 days;
- (d) that if the penalty charge is paid within 14 days, the amount of the penalty charge will be reduced by a specified percentage;
- (e) that if the penalty charge is not paid within 28 days, a notice to owner may be served by the Department on the person who appears to it to be the owner of the vehicle;
- (f) how payment of the penalty charge may be made; and
- (g) such additional matters as the Department may determine.

(4) In paragraph (3)—

“specified” means specified in regulations under Article 4(4);

“within 14 days” and “within 28 days” mean before the end of the period of 14 days or, as the case may be, 28 days from the date of the penalty charge notice.

(5) A penalty charge notice under paragraph (2) must be—

(a) accompanied by a supplementary notice from the Department stating—

(i) the effect of paragraph (6); and

(ii) where paragraph (2)(b) applies, that the traffic attendant was prevented from issuing a penalty charge notice under paragraph (1); and

(b) served, before the end of the period of 28 days from the date on which the alleged contravention occurred, on the person appearing to the Department to be the owner of the vehicle.

(6) Where the Department issues a penalty charge notice under paragraph (2), any statements made under paragraph (3)(c), (d) or (e) shall have effect as if references to the date of the penalty charge notice were references to the date of the supplementary notice under paragraph (5).

(7) A penalty charge notice fixed to a vehicle in accordance with this Article shall not be removed or interfered with except by or under the authority of—

(a) the owner, or person in charge, of the vehicle;

(b) the Department; or

(c) a constable.

(8) A person who contravenes paragraph (7) is guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

Service of notice to owner if penalty charge not paid

6.—(1) Where—

(a) a penalty charge notice with respect to a vehicle has been issued under Article 5; and

(b) the penalty charge has not been paid within 28 days,

the Department may serve a notice (“a notice to owner”) on the person who appears to the Department to have been the owner of the vehicle when the alleged contravention occurred.

(2) In paragraph (1)(b) “within 28 days” means before the end of the period of 28 days from the date—

(a) of the penalty charge notice if it was issued by a traffic attendant; or

(b) of the supplementary notice under Article 5(5) if the penalty charge notice was issued by the Department.

(3) A notice to owner must state—

(a) the grounds on which the traffic attendant believed that a penalty charge was payable with respect to the vehicle;

(b) the amount of the penalty charge which is payable;

(c) that the penalty charge must be paid within 28 days;

- (d) that failure to pay the penalty charge may lead to the penalty charge being increased;
- (e) the amount of that increased charge;
- (f) that there is a right to make representations under Article 9 and a right of appeal under Article 13;
- (g) how payment of the penalty charge may be made; and
- (h) such additional matters as the Department may determine.

(4) In paragraph (3)(c) “within 28 days” means before the end of the period of 28 days from the date of the notice to owner.

Issue of penalty charge notice on basis of record produced by prescribed device

7.—(1) Where the Department has reason to believe on the basis of a record produced by a prescribed device that a penalty charge is payable with respect to a vehicle, it may serve a penalty charge notice on the person who appears to it to have been the owner of the vehicle when the alleged contravention occurred.

(2) The Department shall not serve a penalty charge notice under this Article after the end of the period of 28 days from the date on which the alleged contravention occurred.

(3) A penalty charge notice under this Article must state—

- (a) the grounds on which the Department believes that a penalty charge is payable with respect to the vehicle;
- (b) the amount of the penalty charge which is payable;
- (c) that the penalty charge must be paid within 28 days;
- (d) that if the penalty charge is paid within 14 days, the amount of the penalty charge will be reduced by a specified percentage;
- (e) that failure to pay the penalty charge may lead to the penalty charge being increased;
- (f) the amount of that increased charge;
- (g) that there is a right to make representations under Article 9 and a right of appeal under Article 13;
- (h) how payment of the penalty charge may be made; and
- (i) such additional matters as the Department may determine.

(4) In paragraph (3)—

“specified” means specified in regulations under Article 4(4);

“within 14 days” and “within 28 days” mean before the end of the period of 14 days or, as the case may be, 28 days from the date of the penalty charge notice under this Article.

Prescribed devices: admissibility of evidence

8.—(1) Evidence of a fact relevant to proceedings to which this Article applies may be given by the production of—

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

Traffic Management

- (b) (in the same or another document) a certificate as to the circumstances in which the record was produced signed by a person authorised by the Department;

but subject to the following provisions of this Article.

(2) Subject to paragraph (8), this Article applies to—

- (a) proceedings before an adjudicator relating to a contravention specified in Schedule 1; and
- (b) proceedings for an offence which consists of such a contravention.

(3) A record produced by a prescribed device shall not be admissible as evidence of a fact relevant to proceedings to which this Article applies unless—

- (a) the device is of a type approved by the Department; and
- (b) any conditions subject to which the approval was given are satisfied.

(4) Any approval given by the Department for the purposes of this Article may be given subject to conditions as to the purposes for which, and the manner and other circumstances in which, any device of the type concerned is to be used.

(5) In proceedings to which this Article applies, evidence that a device was of a type approved for the purposes of this Article, or that any conditions subject to which an approval was given were satisfied, may be given by the production of a document which—

- (a) is signed as mentioned in paragraph (1), and
- (b) states that the device was of such a type or that, to the best of the knowledge and belief of the person making the statement, all such conditions were satisfied.

(6) For the purposes of this Article a document purporting to be—

- (a) a record of the kind mentioned in paragraph (1), or
- (b) a certificate or other document signed as mentioned in that paragraph or in paragraph (5),

shall be deemed to be such a record, or to be so signed, unless the contrary is proved.

(7) Nothing in paragraph (1) or (5) makes a document admissible as evidence in proceedings for an offence unless a copy of it has, not less than 7 days before the hearing or trial, been served on the person charged with the offence; and nothing in those paragraphs makes a document admissible as evidence of anything other than the matters shown on a record produced by a prescribed device if that person, not less than 3 days before the hearing or trial or within such further time as the court may in special circumstances allow, serves a notice on the complainant requiring attendance at the hearing or trial of the person who signed the document.

(8) Paragraph (7) does not apply in relation to proceedings before an adjudicator.

Right to make representations to Department

9.—(1) Where it appears to a person who has received a notice under Article 6 or 7 (“the recipient”) that one or more of the grounds mentioned in paragraph (2)

are satisfied, he may make representations in writing to the Department before the end of the period of 28 days from the date of the notice.

(2) The grounds are—

(a) that the recipient—

- (i) never was the owner of the vehicle in question;
- (ii) had ceased to be its owner before the date on which the alleged contravention occurred; or
- (iii) became its owner after that date;

(b) that the alleged contravention did not occur;

(c) that—

- (i) at the time of the alleged contravention the vehicle was in the control of a person without the consent of the owner; or
- (ii) it would be unreasonable to regard the owner as responsible for the alleged contravention because the vehicle had previously been in the control of a person without his consent;

(d) that the recipient is a vehicle-hire firm and—

- (i) the vehicle was at the time of the alleged contravention hired from that firm under a hiring agreement; and
- (ii) the person hiring it had signed a statement of liability acknowledging his liability in respect of any penalty charge during the currency of the hiring agreement;

(e) that the penalty charge exceeded the amount applicable in the circumstances of the case;

(f) in the case of a notice under Article 6 which was preceded by a penalty charge notice issued under Article 5(2)(b), that the traffic attendant was not prevented from issuing a penalty charge notice under Article 5;

(g) that the conduct constituting the alleged contravention is the subject of criminal proceedings or of a fixed penalty notice.

(3) The reference in paragraph (2)(d) to the currency of the hiring agreement includes a reference to any period during which, with the consent of the vehicle-hire firm, the hirer continues in possession of the vehicle as hirer, after the expiry of a fixed period specified in the agreement, but otherwise on the terms and conditions so specified.

(4) The Department shall—

(a) consider any representations made under this Article and any supporting evidence which the person making them provides; and

(b) serve on that person notice of its decision as to whether it accepts that the ground in question has been established.

Additional information to be included in representations

10.—(1) Where in any representations made under Article 9 the ground mentioned in paragraph (2)(a)(ii) or (iii) or (d) of that Article is relied on, the representations must include a statement made by the person making the

representations ("R") of the information required by this Article (if that information is in his possession).

(2) If the ground mentioned in Article 9(2)(a)(ii) is relied on, the following information is required—

- (a) the name and address of the person to whom the vehicle was disposed of; and
- (b) the date on which R complied with any relevant statutory requirements relating to the disposal.

(3) If the ground mentioned in Article 9(2)(a)(iii) is relied on, the following information is required—

- (a) the name and address of the person from whom the vehicle was acquired; and
- (b) the date on which R complied with any relevant statutory requirements relating to the acquisition.

(4) If the ground mentioned in Article 9(2)(d) is relied on, the information required is the name and address of the person hiring the vehicle and the representations must include a copy of the hiring agreement and the statement of liability referred to in Article 9(2)(d)(i) and (ii) (if they are in R's possession).

(5) In paragraphs (2)(b) and (3)(b) "relevant statutory requirements" means requirements under the Vehicle Excise and Registration Act 1994 (c. 22) relating to notifying, or delivering a document to, the Secretary of State.

Duty to cancel notice

11.—(1) Where the Department accepts that a ground mentioned in Article 9(2) has been established, it shall—

- (a) cancel the notice served under Article 6 or 7; and
- (b) state in the notice served under Article 9(4)(b) that the notice served under Article 6 or 7 has been cancelled.

(2) The cancellation of a notice under paragraph (1) does not prevent the Department from serving a fresh notice on another person (to which, in the case of a notice under Article 7, paragraph (2) of that Article shall not apply).

(3) Where the Department accepts that the ground mentioned in Article 9(2)(d) has been established, the person hiring the vehicle shall be taken to be its owner for the purposes of this Order.

Rejection of representations

12. Where the Department serves a notice of rejection under Article 9(4)(b), the notice must—

- (a) state that a charge certificate may be served under Article 14(2) unless before the end of the period of 28 days from the date of that notice—
 - (i) the penalty charge is paid; or
 - (ii) the person on whom the notice is served appeals to an adjudicator under Article 13;

- (b) describe in general terms the form and manner in which such an appeal must be made;
- (c) indicate the nature of an adjudicator's power to award costs against any person appealing to him; and
- (d) contain such other information as the Department considers appropriate.

Appeal to an adjudicator

13.—(1) Where the Department serves a notice of rejection under Article 9(4)(b), the person on whom it is served may appeal to an adjudicator before the end of the period of 28 days from the date of that notice or such longer period as an adjudicator may allow.

(2) On an appeal under this Article, the adjudicator—

- (a) shall consider the representations in question and any additional representations which are made by the appellant on any of the grounds mentioned in Article 9(2);
- (b) shall serve notice of his decision on the appellant and the Department; and
- (c) may give the Department such directions as he thinks appropriate.

(3) The Department shall comply with any directions under paragraph (2)(c) forthwith.

Charge certificates

14.—(1) Paragraph (2) applies where—

- (a) a notice under Article 6 or 7 is served on any person; and
- (b) the penalty charge to which it relates is not paid before the end of the relevant period (as defined in paragraph (3)).

(2) The Department may serve on that person a statement (a "charge certificate") to the effect that the penalty charge in question is increased by a specified percentage.

(3) In this Article "relevant period" means—

- (a) where no representations are made under Article 9, the period of 28 days from the date of the notice under Article 6 or 7;
- (b) where—
 - (i) representations are made under Article 9;
 - (ii) a notice of rejection is served under paragraph (4)(b) of that Article; and
 - (iii) no appeal against the notice of rejection is made, the period of 28 days from the date of the notice of rejection;
- (c) where there has been an unsuccessful appeal against a notice of rejection under Article 9(4)(b), the period of 28 days from the date of the notice of the adjudicator's decision;
- (d) where an appeal against a notice of rejection under Article 9(4)(b) is made but is withdrawn before the adjudicator gives notice of his decision, the period of 14 days from the date on which the appeal is withdrawn.

Enforcement of charge certificate

15.—(1) Where—

(a) a charge certificate is served on any person (“the liable person”); and
(b) the increased penalty charge to which it relates is not paid within 14 days,
the increased penalty charge shall be recoverable by the Department from the liable person.

(2) The Department shall serve on the liable person a notice which states—

- (a) that the increased penalty charge is recoverable from him by the Department; and
- (b) that the liable person may serve a statutory declaration on an adjudicator under Article 16.

(3) Subject to Article 16(5), paragraph (1) shall not have effect in relation to an increased penalty charge until the later of—

- (a) the end of the period of 21 days from the date of a notice under paragraph (2) (or if an adjudicator allows a longer period for service of a statutory declaration under Article 16(1), the end of that longer period); or
- (b) if the liable person serves a statutory declaration, the date of the adjudicator’s decision.

(4) Any costs reasonably incurred by the Department in recovering an amount under paragraph (1) shall be recoverable by the Department from the liable person.

(5) The Judgments Enforcement (Northern Ireland) Order 1981 (NI 6) shall apply with the necessary modifications to any amount recoverable under this Article as it applies in relation to a sum due under a money judgment (within the meaning of that Order).

(6) In paragraph (1) “within 14 days” means before the end of the period of 14 days from the date of the charge certificate.

Appeal by way of statutory declaration to an adjudicator

16.—(1) Where a person is liable to pay an amount under Article 15(1) he may serve a statutory declaration on an adjudicator before the end of the period of 21 days from the date of a notice under paragraph (2) of that Article or such longer period as an adjudicator may allow.

(2) A statutory declaration for the purposes of this Article must state not more than one of the following—

- (a) that the appellant did not receive a notice under Article 6 or 7;
- (b) that the appellant made representations under Article 9 but did not receive a notice of rejection;
- (c) that the appellant appealed to an adjudicator under Article 13 but did not receive a notice of his decision under that Article.

(3) A statutory declaration must state such additional matters as the Lord Chancellor may determine.

(4) The adjudicator shall—

- (a) consider the statutory declaration, any additional representations made by the appellant and any representations made by the Department; and
 - (b) serve notice of his decision on the appellant and the Department.
- (5) Where an adjudicator decides that a statement under paragraph (2) is true—
- (a) the charge certificate shall be deemed to be cancelled and Article 15(1) shall not by virtue of the service of that certificate have effect in relation to the penalty charge;
 - (b) the Department shall comply forthwith with any directions which the adjudicator may give to it; and
 - (c) in the case of a statement under paragraph (2)(c), the adjudicator may take such steps as he thinks appropriate.
- (6) Service of a statutory declaration stating that the appellant did not receive a notice under Article 6 or 7 does not prevent the Department serving a fresh notice under Article 6 or 7 (to which, in the case of a notice under Article 7, paragraph (2) of that Article shall not apply).
- (7) In this Article “appellant” means the person making the statutory declaration.

Procedure on cancellation of penalty charge notice etc.

- 17.—(1) The Department may cancel any penalty charge notice or notice to owner but if it does so, it shall serve notice of the cancellation on the person who appears to it to have been the owner of the vehicle at the time the alleged contravention occurred.
- (2) The Department may cancel a charge certificate but if it does so, it shall serve notice of the cancellation on any person on whom the charge certificate was served.
- (3) The cancellation under this Article of a notice served by the Department or of a charge certificate does not prevent the Department serving a fresh notice or charge certificate (to which, if it is served on another person, any time limit which applied to the cancelled notice or certificate shall not apply).
- (4) This Article is without prejudice to Article 11 (duty to cancel).

Immobilisation and removal of vehicles

Immobilisation of vehicles

- 18.—(1) The Department may fix an immobilisation device to a stationary vehicle on a public road or in a parking place if—
- (a) a traffic attendant has fixed a penalty charge notice to the vehicle; or
 - (b) an amount is recoverable from the owner of the vehicle under Article 15 and prescribed conditions are satisfied.
- (2) The Department shall also fix to the vehicle a notice—
- (a) indicating that an immobilisation device has been fixed to the vehicle and warning that no attempt should be made to drive the vehicle or otherwise put it in motion unless it has been released from the device;
 - (b) specifying the steps to be taken in order to secure its release; and

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(c) giving such other information as the Department may determine.

(3) A notice fixed to a vehicle in accordance with this Article shall not be removed or interfered with except by or under the authority of—

- (a) the owner, or person in charge, of the vehicle; or
- (b) the Department.

(4) A person contravening paragraph (3) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(5) The power conferred by paragraph (1) includes power to move the vehicle to another place and fix an immobilisation device to the vehicle in that other place.

(6) It shall be the duty of the Department to prescribe conditions for the purposes of paragraph (1)(b).

Exemptions from Article 18

19.—(1) An immobilisation device shall not be fixed to a vehicle under Article 18 if a current disabled person's badge is displayed on the vehicle.

(2) Where under Article 5(1)(a) a traffic attendant fixes a penalty charge notice to a vehicle in a parking place in respect of a contravention which consists of, or arises out of, a failure to—

- (a) pay a parking charge;
- (b) display a ticket or parking device properly; or
- (c) remove the vehicle from the parking place by the end of a period for which the appropriate charge was paid,

the Department shall not fix an immobilisation device to the vehicle under Article 18(1)(a) until 15 minutes have elapsed from the time when the traffic attendant fixes the penalty charge notice to the vehicle.

(3) If, in a case in which an immobilisation device would have been fixed to a vehicle but for paragraph (1), the vehicle was not being used—

- (a) in accordance with regulations under section 14 or 14A of the Chronically Sick and Disabled Persons (Northern Ireland) Act 1978 (c. 53); and
- (b) in circumstances falling within section 14B(1)(b) or (2)(b) of that Act (disabled person's concession),

the person in charge of the vehicle shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Release of immobilised vehicle

20.—(1) Subject to paragraph (3), a vehicle to which an immobilisation device has been fixed in accordance with this Order shall be released from that device on payment of the relevant charges.

(2) In paragraph (1) "relevant charges" means—

- (a) the penalty charge payable if a penalty charge notice was fixed to the vehicle;
- (b) any amount recoverable from the owner of the vehicle under Article 15; and

(c) such charge in respect of the immobilisation and release of the vehicle as may be prescribed.

(3) A vehicle to which an immobilisation device has been fixed in accordance with this Order may only be released from the device by or under the direction of a person authorised by the Department.

(4) A person who, without being authorised to do so in accordance with this Article removes or attempts to remove an immobilisation device fixed to the vehicle in accordance with this Order shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Removal of vehicles by the Department

21.—(1) The Department may remove to another place a stationary vehicle on a public road or in a parking place if—

- (a) a traffic attendant has fixed a penalty charge notice to the vehicle; or
- (b) an amount is recoverable from the owner of the vehicle under Article 15 and prescribed conditions are satisfied.

(2) The Department may remove a vehicle under paragraph (1) in such manner as it thinks necessary and may take such measures in relation to the vehicle as it thinks necessary to enable the vehicle to be removed.

(3) The power of removal conferred by paragraph (1) in relation to a vehicle before it was moved shall continue to be exercisable in relation to the vehicle while it remains in the place to which it was moved.

(4) The Department shall take such steps as are reasonably necessary for the safe custody of a vehicle which is removed under paragraph (1) to a place which is not on a public road.

(5) Paragraph (4) shall not apply if in the opinion of the Department the vehicle is in such a condition that it ought to be destroyed.

(6) The power of removal conferred by paragraph (1) in relation to a vehicle includes power to remove from the vehicle any of its contents where—

- (a) it is reasonable to do so to facilitate the removal of the vehicle;
- (b) there is good reason for storing them at a different place from the vehicle;
or
- (c) their condition requires them to be disposed of without delay.

(7) A person who intentionally obstructs or impedes, or assists another person to obstruct or impede, the removal of a vehicle under this Article shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(8) It shall be the duty of the Department to prescribe conditions for the purposes of paragraph (1)(b).

Exemption from Article 21

22. Where under Article 5(1)(a) a traffic attendant fixes a penalty charge notice to a vehicle in a parking place in respect of a contravention which consists of, or arises out of, a failure to—

- (a) pay a parking charge;
- (b) display a ticket or parking device properly; or
- (c) remove the vehicle from the parking place by the end of the period for which the appropriate charge was paid,

the Department shall not remove the vehicle under Article 21(1)(a) until 15 minutes have elapsed from the time when the traffic attendant fixes the penalty charge notice to the vehicle.

Disposal or recovery of vehicles removed under Article 21

23.—(1) Subject to paragraphs (2) and (3), the Department may, in such manner as it thinks fit, dispose of a vehicle which has been removed by the Department under Article 21.

(2) The Department shall not dispose of a vehicle under paragraph (1)—

- (a) before the end of the period of 35 days from the removal date; and
- (b) unless—
 - (i) the owner of the vehicle has failed to comply with a notice served on him requiring him to remove the vehicle from the custody of the Department within 21 days from the date of the notice; or
 - (ii) the Department has been unable to serve such a notice.

(3) If before a vehicle is disposed of by the Department under paragraph (1), the vehicle is claimed by a person who satisfies the Department—

- (a) that he is the owner of the vehicle or is acting with the authority of the owner, and
- (b) that the relevant charges have been paid,

the Department shall permit him to remove the vehicle from its custody.

(4) If, before the expiration of one year from the date on which a vehicle is sold in pursuance of this Article, any person satisfies the Department that at the time of the sale he was the owner of the vehicle, the Department shall pay him any sum by which the proceeds of sale exceed the relevant charges.

(5) If the relevant charges exceed the proceeds of sale, the amount of the difference shall be recoverable by the Department from the person who was the owner of the vehicle on the removal date and Article 15(5) shall apply to that amount and any costs reasonably incurred by the Department as it applies in relation to a sum recoverable under that Article.

(6) The Department may dispose of the contents of a vehicle (including those removed from the vehicle under Article 21(6)) and references in paragraphs (4) and (5) to the proceeds of sale include any proceeds of sale of the contents.

(7) In this Article—

“relevant charges” means—

- (a) the penalty charge payable if a penalty charge notice was fixed to the vehicle;
- (b) any amount recoverable under Article 15 from the person who was the owner of the vehicle on the removal date; and
- (c) such charges in respect of the removal and storage, and in paragraph (4) disposal, of the vehicle as may be prescribed;

“removal date” means the date on which the vehicle was removed (or first removed) under Article 21.

(8) If in the case of any vehicle it appears to the Department that more than one person is or was the owner of the vehicle at the time of the sale, such one of them as the Department thinks fit shall be treated as the owner of the vehicle for the purposes of paragraphs (3) and (4).

Application of Articles 18 to 23 in relation to amounts recoverable under Article 15

24.—(1) The Department may make regulations modifying the application of Articles 18 to 23 in relation to amounts recoverable under Article 15.

(2) The power conferred by paragraph (1) includes power to make additional provisions.

Representations in relation to immobilisation or removal of vehicles

25.—(1) Where—

- (a) a vehicle to which an immobilisation device has been fixed is released in accordance with Article 20;
- (b) a vehicle is removed from the custody of the Department in accordance with Article 23(3); or
- (c) the owner of a vehicle receives any sum under Article 23(4) or is informed that the proceeds of sale of the vehicle did not exceed the relevant charges,

the Department shall inform the relevant persons as soon as practicable in writing of their rights to make representations under this Article and of the effect of Articles 26 to 28.

(2) For the purposes of this Article the relevant persons are the owner of the vehicle and, if he is not the owner, the person who paid the relevant charges under Article 20 or 23.

(3) Where it appears to a relevant person that one or more of the relevant grounds are satisfied, he may make representations in writing to the Department before the end of the period of 28 days from the date on which he is informed under paragraph (1) of his right to make representations.

(4) The grounds are—

- (a) in a case within paragraph (1)(a)—
 - (i) that an immobilisation device should not have been fixed to the vehicle because of Article 19(1); or
 - (ii) that the Department did not comply with Article 19(2);

- (b) where an immobilisation device was fixed to the vehicle under Article 18(1)(a) or the vehicle was removed under Article 21(1)(a)—
 - (i) that there were no reasonable grounds for the traffic attendant to believe that a penalty charge was payable in respect of the vehicle;
 - (ii) that at the time of the alleged contravention the vehicle was in the control of a person without the consent of the owner; or
 - (iii) that it would be unreasonable to regard the owner as responsible for the alleged contravention because the vehicle had previously been in the control of a person without his consent;
 - (c) where an immobilisation device was fixed to the vehicle under Article 18(1)(b) or the vehicle was removed under Article 21(1)(b), that no amount was recoverable from the owner of the vehicle under Article 15 or that prescribed conditions mentioned in Article 18(1)(b) or 21(1)(b) were not satisfied;
 - (d) where the vehicle was removed under Article 21(1)(a), that the Department did not comply with Article 22;
 - (e) that the charges under Article 20(1) or 23(3)(b) exceeded the amount applicable in the circumstances of the case.
- (5) The Department shall before the end of the period of 56 days beginning with the date on which it receives any representations under this Article—
- (a) consider any representations made under this Article and any supporting evidence which the person making them provides; and
 - (b) serve on that person notice of its decision as to whether it accepts that the ground in question has been established.

Refund of sums if representations accepted

26.—(1) Where the Department serves notice under Article 25(5)(b) that it accepts that a ground has been established, it shall (when serving that notice) refund any sums—

- (a) paid under Article 20(1) or 23(3), or
 - (b) deducted from the proceeds of sale under Article 23(4),
- except to the extent (if any) to which those sums were properly paid.

(2) Where the Department fails to comply with Article 25(5)(b) before the end of the period of 56 days mentioned there—

- (a) the Department shall be taken to have accepted that the ground in question has been established and to have served notice to that effect under Article 25(5)(b); and
- (b) paragraph (1) shall have effect as if it required any refund to be made immediately after the end of that period.

Rejection of representations

27. Where the Department serves a notice of rejection, the notice must—

- (a) inform the person on whom it is served of his right to appeal to an adjudicator under Article 28;

- (b) describe in general terms the form and manner in which such an appeal must be made;
- (c) indicate the nature of an adjudicator's power to award costs; and
- (d) contain such other information as the Department considers appropriate.

Appeal to an adjudicator

28.—(1) Where the Department serves a notice of rejection, the person making representations under Article 25 may appeal to an adjudicator against the Department's decision before the end of the period of 28 days from the date of that notice or such longer period as an adjudicator may allow.

(2) On an appeal under this Article, 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 Article 25(4).

(3) If the adjudicator concludes—

- (a) that any ground has been established; and
- (b) that the Department would have been under the duty imposed by Article 26(1) to refund any sum if it had served notice that it accepted that the ground in question had been established,

he shall serve notice of his decision on the appellant and the Department and shall direct the Department to make the necessary refund.

(4) The Department shall comply with any directions under paragraph (3) forthwith.

Adjudicators

Adjudicators

29.—(1) The First Minister and deputy First Minister acting jointly may appoint persons to act as adjudicators for the purposes of this Order.

(2) A person shall not be appointed as an adjudicator unless he is a barrister or solicitor of at least five years' standing.

(3) A person shall be appointed as an adjudicator for such term not exceeding five years as may be specified in his instrument of appointment.

(4) An adjudicator shall hold and vacate office under the terms of the instrument under which he is appointed.

(5) An adjudicator may resign office by notice in writing to the Office of the First Minister and deputy First Minister.

(6) An adjudicator may be removed from office by the First Minister and deputy First Minister acting jointly only on the ground of misbehaviour or inability to perform the functions of the office.

(7) An adjudicator is eligible for re-appointment if he ceases to hold office otherwise than under paragraph (6).

(8) Until the commencement of section 5(1) of the Justice (Northern Ireland) Act 2002 (c. 26), references in this Article to the First Minister and deputy First

Minister acting jointly or to the Office of the First Minister and deputy First Minister shall be construed as references to the Lord Chancellor.

Proceedings before adjudicators

30.—(1) The Lord Chancellor may make regulations providing for the procedure to be followed in relation to proceedings before adjudicators.

(2) The regulations may, in particular, include provision—

- (a) as to the manner in which appeals to adjudicators are to be made or withdrawn;
- (b) authorising an appeal to an adjudicator to be disposed of on the basis of written representations unless the appellant requests an oral hearing;
- (c) as to the procedure to be followed before the hearing of an appeal by an adjudicator;
- (d) requiring any such hearing to be held in public except in circumstances specified in the regulations;
- (e) as to the persons entitled to appear and be heard on behalf of the parties;
- (f) requiring persons to attend to give evidence and to produce documents;
- (g) as to evidence at the hearing;
- (h) as to the adjournment of hearings;
- (i) for the award of costs in circumstances specified in the regulations;
- (j) for the settlement of costs by such method as may be specified in the regulations;
- (k) authorising decisions of adjudicators to be reserved;
- (l) authorising or requiring adjudicators—
 - (i) to revise or set aside decisions;
 - (ii) to revoke or vary orders made by them;
- (m) requiring decisions of, and orders made by, adjudicators to be recorded;
- (n) as to the proof of decisions of, and orders made by, adjudicators;
- (o) authorising the correction of clerical errors in records kept in accordance with the requirements of the regulations;
- (p) requiring service of—
 - (i) notice of decisions of adjudicators;
 - (ii) copies of any orders made by adjudicators;
 - (iii) notice of any corrections made by adjudicators in their decisions or orders.

(3) Subject to any provision made by the regulations, an adjudicator may regulate his own procedure.

(4) If a person who is required—

- (a) to attend a hearing held by an adjudicator; or
- (b) to produce any document to an adjudicator in accordance with regulations under paragraph (1),

fails without reasonable excuse to do so, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

Further provisions relating to adjudicators

31.—(1) The Lord Chancellor shall—

- (a) make arrangements for the provision of accommodation and administrative staff and facilities for adjudicators;
- (b) determine the places where adjudicators are to sit; and
- (c) at least once in every twelve months publish information on the discharge by the adjudicators of their functions under this Order.

(2) The Department shall defray the costs of the adjudication process (including the remuneration of the adjudicators).

(3) An adjudicator shall provide the Lord Chancellor with such information on the discharge of his functions under this Order as the Lord Chancellor may determine.

Disabled persons' badges

Disabled persons' badges

32.—(1) Section 14 of the Chronically Sick and Disabled Persons (Northern Ireland) Act 1978 (c. 53) (badges for display on motor vehicles used by disabled persons) shall be amended in accordance with paragraphs (2) to (6).

(2) In subsection (4), for the word “institution” (in both places) there shall be substituted the word “organisation”.

(3) In subsection (4B), after the word “badge” where it first occurs there shall be inserted the words “purporting to be”.

(4) After subsection (4B) there shall be inserted the following subsections—

“(4BA) Where it appears to a constable or a traffic attendant that there is displayed on any motor vehicle a badge purporting to be of a form prescribed under this section, he may require any person who—

- (a) is in the vehicle, or
 - (b) appears to have been in, or to be about to get into, the vehicle,
- to produce the badge for inspection.

(4BB) The power conferred on a traffic attendant by subsection (4BA) is exercisable only for purposes connected with the discharge of his functions in relation to a stationary vehicle.

(4BC) A person who without reasonable excuse fails to produce a badge when required to do so under subsection (4BA) shall be guilty of an offence.”

(5) In subsection (4C), after the words “subsection (4B)” there shall be inserted the words “or (4BC)”.

(6) After subsection (9) there shall be added the following subsection—

“(10) Regulations under this section or section 14A may contain incidental, supplementary, transitional or consequential provisions.”

Recognition of badges issued outside Northern Ireland

33. After section 14 of the Chronically Sick and Disabled Persons (Northern Ireland) Act 1978 (c. 53) there shall be inserted the following section—

“Recognition of badges issued outside Northern Ireland

14A.—(1) For the purposes of this section and section 14B, a “recognised badge” means—

- (a) a badge issued under section 21 of the Chronically Sick and Disabled Persons Act 1970, or any provision replacing that section, as from time to time amended, or
- (b) a badge issued under provisions of the law of any jurisdiction outside the United Kingdom that are specified in regulations made by the Department.

(2) In exercising the power under subsection (1)(b), the Department may specify a provision only if it appears to the Department that badges issued under the provision are issued by reference to persons who are, or include, disabled persons.

(3) A recognised badge may be displayed on a motor vehicle only in such circumstances and in such manner as may be prescribed by regulations made by the Department.

(4) A person who drives a motor vehicle on a road (within the meaning of the Road Traffic Regulation (Northern Ireland) Order 1997) at a time when a badge purporting to be a recognised badge is displayed on the vehicle is guilty of an offence unless the badge is a recognised badge and is displayed in accordance with regulations made under subsection (3).

(5) Where it appears to a constable or a traffic attendant that there is displayed on any motor vehicle a badge purporting to be a recognised badge, he may require any person who—

- (a) is in the vehicle, or
- (b) appears to have been in, or to be about to get into, the vehicle,

to produce the badge for inspection.

(6) The power conferred on a traffic attendant by subsection (5) is exercisable only for purposes connected with the discharge of his functions in relation to a stationary vehicle.

(7) A person who without reasonable excuse fails to produce a badge when required to do so under subsection (5) shall be guilty of an offence.

(8) A person guilty of an offence under subsection (4) or (7) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(9) The concessions mentioned in subsection (10) shall apply in respect of vehicles lawfully displaying a recognised badge as they apply in respect of vehicles lawfully displaying a badge issued under section 14.

(10) The concessions are—

- (a) any exemption from an order under the Road Traffic Regulation (Northern Ireland) Order 1997 given by reference to vehicles lawfully displaying a badge issued under section 14;
 - (b) any provision made in an order under that Order for the use of a parking place by such vehicles.
- (11) The Department may by regulations provide that recognised badges are to be treated, for purposes specified in the regulations, as if they were badges issued under section 14.”

Wrongful use of badges

34. After section 14A of the Chronically Sick and Disabled Persons (Northern Ireland) Act 1978 (c. 53) (inserted by Article 33) there shall be inserted the following section—

“Wrongful use of badge

14B.—(1) A person who at any time contravenes any provision of an order under the Road Traffic Regulation (Northern Ireland) Order 1997 relating to the parking of motor vehicles is also guilty of an offence under this subsection if at that time—

- (a) there was displayed on the motor vehicle in question a badge purporting to be of a form prescribed under section 14, and
- (b) he was using the vehicle in circumstances where a disabled person’s concession would be available to a vehicle lawfully displaying a badge issued under that section,

but he shall not be guilty of an offence under this subsection if the badge was issued under that section and displayed in accordance with regulations made under it.

(2) A person who at any time contravenes any provision of an order under the Road Traffic Regulation (Northern Ireland) Order 1997 relating to the parking of motor vehicles is also guilty of an offence under this subsection if at that time—

- (a) there was displayed on the motor vehicle in question a badge purporting to be a recognised badge, and
- (b) he was using the vehicle in circumstances where a concession would, by virtue of section 14A(9) to (11), be available to a vehicle lawfully displaying a recognised badge,

but he shall not be guilty of an offence under this subsection if the badge was a recognised badge and displayed in accordance with regulations made under section 14A.

(3) A person guilty of an offence under subsection (1) or (2) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) In this section “disabled person’s concession” means—

- (a) an exemption from an order under the Road Traffic Regulation (Northern Ireland) Order 1997 given by reference to vehicles lawfully displaying a badge issued under section 14; or

- (b) a provision made in any order under that Order for the use of a parking place by such vehicles.”.

Consequential provision

35. In Article 44(2) of the 1997 Order (powers of traffic wardens), for sub-paragraph (d) there shall be substituted the following sub-paragraph—

“(d) sections 14(4BA) and 14A(5) of the Chronically Sick and Disabled Persons (Northern Ireland) Act 1978.”.

Maps

Maps

36.—(1) The Department may prepare a map for the purposes of any—

- (a) traffic regulation order;
- (b) parking place order; or
- (c) extinguishment order.

(2) The Department shall ensure that any map to which reference is made by a traffic regulation order, a parking place order or an extinguishment order is—

- (a) available for inspection by the public; and
- (b) preserved for record purposes.

(3) In this Article—

“extinguishment order” means—

- (a) an order made, or which the Department proposes to make, under Article 100(1) of the Planning (Northern Ireland) Order 1991 (NI 11);
- (b) any provision having effect as if so made;

“map” includes a map in electronic form;

“parking place order” means—

- (a) an order made, or which the Department proposes to make, under Article 10(4) or 15(1) of the 1997 Order;
- (b) any provision having effect as if so made;

“traffic regulation order” means—

- (a) an order made, or which the Department proposes to make, under Article 4 of the 1997 Order;
- (b) any prohibition or restriction having effect, or which the Department intends to impose, under Part III of the 1997 Order;
- (c) such other provisions of a similar nature as the Department considers appropriate.

Use of maps in certain orders

37.—(1) In Article 4 of the 1997 Order, after paragraph (4) there shall be inserted the following paragraph—

“(4A) A traffic regulation order may—

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(a) specify any public road or any area by reference to a map prepared under Article 36 of the Traffic Management (Northern Ireland) Order 2005 which is not part of the order; and

(b) provide that the order shall have effect as if the map were part of the order.”.

(2) In Article 10 of the 1997 Order (power of Department to provide parking places), after paragraph (6) there shall be inserted the following paragraph—

“(6A) An order under paragraph (4) may—

(a) specify any road by reference to a map prepared under Article 36 of the Traffic Management (Northern Ireland) Order 2005 which is not part of the order; and

(b) provide that the order shall have effect as if the map were part of the order.”.

(3) In Article 15 of the 1997 Order (designation of parking places on roads for which charges may be made), after paragraph (4) there shall be inserted the following paragraph—

“(4A) An order under paragraph (1) may—

(a) designate a parking place or specify a public road by reference to a map prepared under Article 36 of the Traffic Management (Northern Ireland) Order 2005 which is not part of the order; and

(b) provide that the order shall have effect as if the map were part of the order.”.

Miscellaneous

Acquisition of land for purposes of functions of Department under this Order or 1997 Order

38.—(1) In Article 110(1) of the Roads (Northern Ireland) Order 1993 (NI 15) (acquisition of land for purposes of functions of Department under that Order), after the words “this Order” there shall be inserted the words “the Road Traffic Regulation (Northern Ireland) Order 1997 or the Traffic Management (Northern Ireland) Order 2005,”.

(2) In Article 118(1) of that Order (power to obtain information as to ownership of land), after the words “this Order” there shall be inserted the words “the Road Traffic Regulation (Northern Ireland) Order 1997 or the Traffic Management (Northern Ireland) Order 2005,”.

Parking charges

39. The following provisions of the 1997 Order (provisions for different kinds of charges for the use of parking places) shall cease to have effect—

(a) in Article 2(2), the definitions of “excess charge” and “initial charge”;

(b) Article 13(3) and (4);

(c) Article 14(3)(b);

(d) Article 16(1); and

(e) in Article 19—

- (i) in paragraph (1)(a)(ii), the words “after the excess charge has been incurred”; and
- (ii) paragraph (7).

Disposal of abandoned vehicles under 1997 Order

40.—(1) Article 52 of the 1997 Order (disposal of abandoned vehicles by Department) shall be amended as follows.

(2) In paragraph (1), after the words “13 or 15” there shall be added the words “or of Article 21 of the Traffic Management (Northern Ireland) Order 2005”.

(3) In paragraph (4)(b), for the words “such sums as may reasonably have been incurred in respect of the removal and storage of the vehicle” there shall be substituted the words “the relevant charges”.

(4) In paragraph (5), for the words “reasonable costs of the removal, storage and disposal of the vehicle” there shall be substituted “relevant charges”.

(5) After paragraph (6) there shall be added the following paragraph—

“(7) In paragraphs (4) and (5) “relevant charges” means—

- (a) any penalty charge payable in respect of the vehicle;
- (b) any sum recoverable from the owner of the vehicle;
- (c) the reasonable costs of the removal and storage of the vehicle; and
- (d) in paragraph (5) the reasonable costs of the disposal of the vehicle.”.

Procedure for making traffic regulation orders, etc.

41.—(1) Schedule 1 to the 1997 Order (traffic regulation orders) shall be amended as follows.

(2) In paragraph 3 (publication of notice before making traffic regulation order)—

(a) in sub-paragraph (2)—

- (i) in head (c), after the words “any road” there shall be inserted the words “or area”;
- (ii) in head (d), the words “in that area” shall cease to have effect;

(b) in sub-paragraph (5)—

- (i) the words “in respect of a road” shall cease to have effect;
- (ii) for the words “area in which the road is situated” there shall be substituted the words “district where the order will apply”.

(3) In paragraph 6(1)(b) (publication of notice after traffic regulation order is made), for the words “area in which any road to which the order relates is situated” there shall be substituted the words “district where the order applies”.

(4) Schedule 2 which makes similar amendments of Schedules 2 to 6 to the 1997 Order shall have effect.

Relationship between traffic regulation orders and earlier provisions

42.—(1) The power of the Department to make any provision under Article 4 of the 1997 Order (traffic regulation orders) includes, and shall be deemed always to have included, any power conferred by Article 21 or 22 of the 1981 Order (powers to control traffic).

(2) Without prejudice to paragraph (1), a traffic regulation order may amend, revoke or reproduce with or without modifications any provision to which paragraph (4) applies.

(3) Paragraph 1(1) of Schedule 1 to the 1997 Order (procedure for making traffic regulation orders) shall not require the Department to comply with paragraphs 2 and 3 of that Schedule (consultation and publication of notices) in respect of any provision of a traffic regulation order which revokes or reproduces with or without modifications any provision to which paragraph (4) applies.

(4) This paragraph applies to any provision which was—

- (a) made under Article 21 or 22 of the 1981 Order, or
- (b) had effect, immediately before the commencement of Article 4 of the 1997 Order, as if made under Article 21 or 22 of the 1981 Order.

(5) Any reference in the 1997 Order to a traffic regulation order includes, and shall be deemed always to have included, any provision to which paragraph (4) applies.

(6) In this Article—

“1981 Order” means the Road Traffic (Northern Ireland) Order 1981 (NI 1);

“traffic regulation order” means an order under Article 4 of the 1997 Order.

Power to make consequential amendments of traffic regulation orders, etc.

43. The Department may by order make such amendments or revocations as appear to it necessary or expedient in consequence of this Order—

- (a) of any provision made under Article 4, 10, 13 or 15 of the 1997 Order (traffic regulation orders and orders relating to parking places); or
- (b) of any provision to which Article 42(4) applies (provisions under earlier legislation).

False representations

44. A person who makes a representation under this Order which is false in a material particular and does so recklessly or knowing it to be false shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Service of documents

45. For the purposes of this Order section 24 of the Interpretation Act (Northern Ireland) 1954 (c. 33) (service of documents) shall apply as if the word “registering” were omitted from subsection (1).

Traffic Management

Regulations

46.—(1) Subject to paragraph (2), regulations made under this Order shall be subject to negative resolution.

(2) Regulations made under this Order by the Lord Chancellor shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 (c. 36) shall apply accordingly.

Repeals

47. The statutory provisions specified in Schedule 3 are hereby repealed to the extent specified in the second column of that Schedule.

A. K. Galloway
Clerk of the Privy Council

SCHEDULES

Article 4(2).

SCHEDULE 1

CONTRAVENTIONS SUBJECT TO PENALTY CHARGES

Offences under the 1997 Order

An offence under Article 4(5), 5(9), 7(9) or 8(3) of contravening a prohibition or restriction on the waiting of vehicles in any public road or in any area or the loading or unloading of vehicles.

An offence under Article 14(1).

An offence under Article 19(1) or (3) (certain offences relating to parking places on roads where charges may be made).

An offence under Article 59(4) (contravention of regulations relating to pedestrian or other crossings).

Other offences

An offence under Article 50 of the Road Traffic (Northern Ireland) Order 1995 (NI 18) of contravening an indication given by a traffic sign of a type shown in diagram 636 of Schedule 2 to the Traffic Signs Regulations (Northern Ireland) 1997 (S.R. 1997 No. 386) (temporary prohibition of waiting except for loading and unloading) (construing the reference to the traffic sign in accordance with regulation 4(b) of those Regulations).

An offence under that Article of contravening in respect of a stationary vehicle a traffic sign indicating a prohibition or restriction under an order under Article 100(1) of the Planning (Northern Ireland) Order 1991 (NI 11) on the use of vehicles on a road (within the meaning of that Order of 1991).

An offence under any statutory provision of contravening a prohibition or restriction on the use of a stand or starting place for taxis or taxis of a particular description by a vehicle which is not a taxi or not a taxi of that description ("taxi" meaning a public service vehicle within the meaning of the Road Traffic (Northern Ireland) Order 1981 which seats not more than eight passengers or such number less than eight as applies for the purposes of the prohibition or restriction).

Exceptions

This Schedule does not apply to an offence under Article 4(5), 5(9), 7(9) or 8(3) of the 1997 Order where a person contravenes a prohibition or restriction by causing or permitting a vehicle to wait—

- (a) in such a position as to obstruct access to any premises; or
- (b) (unless the prohibition or restriction is indicated by a traffic sign) in a public road within 15 metres of its junction with any other road.

This Schedule does not apply to an offence under Article 14(1) of the 1997 Order where a person otherwise than as authorised by a licence under Article

13(14) of that Order uses part of an off-street parking place as mentioned in Article 13(14) of that Order.

SCHEDULE 2

Article 41(4).

AMENDMENTS OF SCHEDULES 2 TO 6 TO THE 1997 ORDER

1. Amend the 1997 Order as follows.

2.—(1) Amend Schedule 2 to the 1997 Order (experimental traffic schemes) as follows.

(2) In paragraph 4—

(a) in sub-paragraph (1) for “area in which any road to which the scheme relates is situated” substitute “district where the scheme applies”;

(b) in sub-paragraph (2)—

(i) in head (c), after the word “road” insert “or area”;

(ii) in head (d), omit “in that area”.

(3) In paragraph 7(1)(b)(ii), for “area in which any road to which the scheme relates is situated” substitute “district where the scheme applies”.

(4) In paragraph 9, for “area in which any road to which the scheme relates is situated” substitute “district where the scheme applies”.

(5) In paragraph 10(2), for “area in which any road to which the provision relates” substitute “district where the provision applies”.

3.—(1) Amend Schedule 3 (temporary traffic regulation) as follows.

(2) In paragraph 2, for “area” substitute “district”.

(3) In paragraph 5(a), omit “in the area”.

4.—(1) Amend Schedule 4 (orders under Article 10, 13 or 15) as follows.

(2) In paragraph 3—

(a) in sub-paragraph (1), for “area” substitute “district”;

(b) in sub-paragraph (2)(d), omit “in that area”.

(3) In paragraph 6(b), for “area” substitute “district”.

(4) In paragraph 7(1), for “area” substitute “district”.

5.—(1) Amend Schedule 5 (orders under Article 36(3)(a), 37 or 38) as follows.

(2) In paragraph 3—

(a) in sub-paragraph (2)(d), omit “in that area”;

(b) in sub-paragraph (4), for “area” substitute “district”.

(3) In paragraph 6(b), for “area” substitute “district”.

6.—(1) Amend Schedule 6 (inquiries) as follows.

(2) In paragraph 1—

(a) in sub-paragraph (1)(b), for “area” substitute “district”;

(b) in sub-paragraph (2)(f), omit “in that area”.

Article 47.

SCHEDULE 3

REPEALS

Short Title	Extent of repeal
The Road Traffic Offenders (Northern Ireland) Order 1996 (NI 10).	In Part I of Schedule 1, the entries relating to Articles 56 and 57 of the Road Traffic Regulation (Northern Ireland) Order 1997.
The Road Traffic Regulation (Northern Ireland) Order 1997 (NI 2).	<p>In Article 2(2), the definitions of “excess charge” and “initial charge”.</p> <p>Article 13(3) and (4).</p> <p>Article 14(3)(b).</p> <p>Article 16(1).</p> <p>In Article 19, in paragraph (1)(a)(ii), the words “after the excess charge has been incurred” and paragraph (7).</p> <p>Articles 56 and 57.</p> <p>In Schedule 1, in paragraph 3(2)(d), the words “in that area”.</p> <p>In Schedule 2, in paragraph 4(2)(d), the words “in that area”.</p> <p>In Schedule 3, in paragraph 5(a), the words “in the area”.</p> <p>In Schedule 4, in paragraph 3(2)(d), the words “in that area”.</p> <p>In Schedule 5, in paragraph 3(2)(d), the words “in that area”.</p> <p>In Schedule 6, in paragraph 1(2)(f), the words “in that area”.</p>

EXPLANATORY NOTE

(This note is not part of the Order)

This Order introduces a system of penalty charging for certain road traffic contraventions. It confers powers on the Department to immobilise or remove vehicles where a penalty charge is payable or recoverable from their owners. It also makes miscellaneous amendments, including amendments for the recognition of disabled persons' badges issued outside Northern Ireland.

Final Report

Internal Audit Review of Penalty Charge Notice (PCN) Processing

Date: 2nd June 2017
TRIM Reference: IN1/17/340626

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Acknowledgement

Internal Audit would like to thank management and staff for their co-operation and assistance during this audit assignment.

1. Introduction, Scope and Background

1.1 Introduction

Internal Audit recently carried out a review of Penalty Charge Notice (PCN) Processing within Parking Enforcement Unit. The review forms part of the audit programme of work for 2016/17. The objectives and scope for the review were agreed with the Director of Public Transport Projects prior to commencement of the audit.

1.2 Scope

The purpose of the review was to provide an opinion on the risk management, control and governance arrangements established by Management over PCN Processing.

The scope of the audit encompassed a review of the following activities:

- Processing of Challenges, Representations and Appeals relating to PCNs; and
- Recovery of debt relating to PCNs.

The following objectives were designed to ensure that:

- Challenges, representations and appeals relating to PCNs are processed in a timely manner and in accordance with all relevant legislation, policies and procedures; and
- All debts relating to PCNs are identified and recovered in an efficient, effective and timely manner in line with relevant policies and procedures.

1.3 Background Information

Parking Enforcement and Policy Unit is part of the Roads and Rivers Group with units based in Belfast, Coleraine and Omagh. When parking enforcement was decriminalised during 2006 the unit was responsible for the enforcement of most parking restrictions on-street, off street and also Park and Ride charged car parks. Following the re-organisation of local government on 1st April 2015 all car parks, charged and free (excluding Park and Ride and Park and Share car parks) transferred to local Council control. However, under an

agreement with all Councils, TransportNI continues to operate and enforce these car parks on behalf of each local Council.

In addition from 1st June 2015 TransportNI became responsible for the enforcement of moving traffic offences in Bus Lanes and other bus priority measures in the Greater Belfast area. The business case for the introduction of bus lanes was based on a projection of 10,000 Penalty Charge Notices (PCNs) per annum and outlined the requirement for two additional staff members to manage the associated workload. In actual fact no additional staff resource has been made available and the actual number of moving traffic violations is on average 30,000 per annum.

2. Executive Summary

2.1 Overall Audit Opinion

Green

Satisfactory – Overall there is a satisfactory system of governance, risk management and control. While there may be some residual risk identified, this should not significantly impact on the achievement of system objectives.

(See Annex 1 for Classifications of Opinion)

Challenges, Representations and Appeals

An effective process has been established to ensure that challenges and representations relating to PCNs are identified and processed on a timely and consistent basis. In addition inbuilt system controls and a range of management checks are operating effectively to ensure compliance with internal procedures. **We did however note that there is currently a three month backlog of appeals cases pending review by the Appeals team due to a lack of resources.**

Debt Recovery

An effective process has been established to ensure that debt is identified and reported on a timely basis. In addition we noted all requests for PCN write-offs and disposal of vehicles are appropriately authorised. We did however identify the following weakness:

- Out of date PCN processing Guide;
- A backlog of cases at Enforcement of Judgement Orders (EJO) search group stage; and

We have made related recommendations to improve control over these weaknesses.

2.2 Key Findings

The number of findings and recommendations (by risk priority) is summarised as follows:

Priority 1	Priority 2	Priority 3
0	4	1

3. Detailed Findings and Recommendations

3.1 Audit Area 1 ~ Challenges, Representations and Appeals

3.1.1 Appeals Backlog

The Department has a legal obligation as set out in the Traffic Management (NI) Order 2005 to deal with all representations made by individuals regarding PCNs. If the Department decides to reject a representation the owner may appeal against the decision by completing an appeals form and forwarding to the NI Traffic Penalty Tribunal (TPT). On receipt of the appeal TPT court service staff record the case on the Si-Dem system which transfers to the appeals work group.

Once in the appeals work group the EO2 must review the case and decide if the appeal should be contested. If it is decided to contest the case the file is passed to the AO within the appeals team to create an evidence pack for issue to the TPT and the appellant. During fieldwork we noted that 78 cases were pending decision by the EO2 as there is a three month back log and a further two month backlog in creating the evidence packs required for the hearing. We have been advised that this issue has occurred due to a lack of resources.

Risk

If appeals cases are not considered and evidence packs created on a timely basis there is a risk appellants will have an unacceptable length of time to wait for their appeal to be heard by an adjudicator. In addition the delays in appeals may also delay the payment of debt if the appellant is unsuccessful.

Recommendation	Priority
Management should carry out an exercise to clear the back log of appeals cases. Once cleared management should monitor to ensure it does not reoccur.	2

3.1.2 ~ Reasons for not contesting Appeals

Once the Appeals EO2 is notified of an appeal they must review the case and decide if the appeal should be contested. During fieldwork we examined five appeals where TransportNI had decided not to contest and noted that in two instances insufficient detail had been recorded on the SIDEM system to support the decision made although the Approving Officer provided adequate explanation and evidence when asked.

Risk

If a record is not maintained to support decisions made within the appeal process there is a risk that management cannot determine if the cancellation of the PCN is justifiable.

Recommendation	Priority
Management should remind staff of the need to document the rationale for decisions made during the appeals process.	3
Management Response {Accepted, Rejected or Alternative Proposal}	Responsible Owner
Accepted	Implementation Date
Management will issue an instruction to Appeals staff to carry out this action	May 2017

Management Response {Accepted, Rejected or Alternative Proposal}	Responsible Owner	Implementation Date
<p>Accepted</p> <ul style="list-style-type: none"> Management accept that at any given time there may be a number of cases moving through the appeals process. It is a matter of fact that the number of people using the Appeals service has increased and this has placed a burden on the PEPU and TPT processing staff to move the cases along quickly. Approximately 50 appeals are being received per month. In addition to resource issues at PEPU side there was a reduced number of TPT adjudicators in post and this has now been remedied. TPT have also added extra hearing days to assist clearing the backlog. PEPU added resource at AO grade to assist and has implemented a change in work processes so that AO's make an initial assessment and recommendation to the EO2 on whether to contest the appeal or not. Another EO2 within the unit has been identified to be trained to and represent the Department at appeals. PEPU met with TPT managers on 01/06/2017 to discuss and agree potential measures that could be taken to address backlogs. TPT managers are going to liaise with Adjudicators. 		<p>Complete - 5 days per month allocated by TPT from May 2017</p> <p>Completed -- May 2017</p> <p>Completed -- June 2017</p>

3.2.3 EJO Search Group

When a penalty charge remains unpaid after issue of the Notice of Enforcement of Charge Certificate (NOECC) the system automatically progresses the case to the EJO search work group. If the offender meets the criteria for clamping and removal the system will automatically add that vehicle to the Clamping & Removal list however, the system software does not automatically identify those cases which meet the criteria for pursuing the debt through the EJO office. As a result administrative staff have been manually filtering the EJO search group on a daily basis to identify cases which meet the criteria. Management have advised that a new report has been created and will be introduced to streamline the process however, we have reviewed the report and note that it will not capture all relevant cases.

In addition we note that at date of testing (March 2017) approximately 41,000 cases had progressed to the 'Select for EJO' workgroup. Currently the EJO team select 20 cases per month to conduct an online EJO search and if suitable the case is referred for EJO action. However, at this rate the backlog is steadily increasing and will take a considerable amount of time to clear. We also noted that there is no:

- agreed criteria for prioritising potential EJO cases;
- agreed strategy for addressing the backlog of cases that have progressed to 'select for EJO' stage; and
- Policy with regard to when these cases would be suitable for write-off.

In addition the pursuit of debt via EJO incurs costs not included within the PCN charge therefore if the EJO is not successful the department has to absorb the additional costs.

Risk

In the absence of an agreed strategy / action plan including established criteria for prioritising the backlog of cases at 'selected for EJO' stage there is an increased risk that debt recovery action may not be initiated on a timely basis and consistent manner resulting in increased levels of debt and potential loss of income.

Recommendation

Management should review the cost effectiveness and practicality of pursuing debt via the EJO process.

Priority

2

Management Response {Accepted, Rejected or Alternative Proposal}		Responsible Owner	Implementation Date
Accepted	<p>Management accept that they should review the cost effectiveness and practicality of pursuing debt via the EJO process. However it should be noted that where clamping action cannot be taken there is no other alternative method of recovery within the legislation.</p> <p>Previous to this audit management considered procuring the services of a debt collection agency but in doing so would jeopardise their service level agreements with DVLA and DVCSD.</p> <p>Management recognise their response to recommendation 3.2.1 as the best solution to this problem.</p>		A further submission will be made to a new Minister by 30/09/2017 (subject to the NI Assembly being in place at this time)
Recommendation		Priority	
In the interim management should develop a strategy to recover debt from the existing backlog of EJO search group cases while considering the need to prioritise and write-off for aged debts.		2	
Management Response {Accepted, Rejected or Alternative Proposal}		Responsible Owner	Implementation Date
Accepted	<ul style="list-style-type: none"> Management have a strategy to recover debt from the existing backlog of EJO search group cases. However to prioritise all EJO search group cases and subsequently process all of these cases will require a substantial increase in both finance (for EJO fees) and staff to carry out the full EJO process. 		

<ul style="list-style-type: none"> • It must also be recognised that part of the debt belongs to the 11 local councils and only 3 councils have authorised the expenditure of EJO fees on a trial basis to recover debt by this method. One of the councils has determined that they will not continue with EJO debt recovery. • Off Street PCN debt reports are forwarded to each council twice per annum – some councils authorise the write off of debt and others do not. Where a council does not authorise the write off and does not authorise debt recovery by EJO there is no further action the Department can take unless the clamping criteria below is met. • The Councils also restrict the clamping process as they all have determined that the 3 PCN rule only applies when all of the 3 PCNs are issued within <u>their own council</u> Off Street Car Parks. • PEPUs are committed to profiling the debt and will review aged debt with a view to preparing write offs if no positive outcome is envisaged. 	<p>Complete - Reports sent to all Councils in May 2017</p> <p>31/12/2017</p>
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Internal Audit Opinion

Opinion (Ratings)	Definition
Green	Satisfactory – Overall there is a satisfactory system of governance, risk management and control. While there may be some residual risk identified, this should not significantly impact on the achievement of system objectives.
Amber	Limited – There are significant weaknesses within the governance, risk management and control framework which if not addressed could lead to the system objectives not being achieved.
Red	Unacceptable – The system of governance, risk management and control has failed or there is a real and substantial risk that the system will fail to meet its objectives.

ANNEX 2

Prioritisation of Audit Recommendations

To assist management in prioritising the implementation of audit recommendations we use a three point scale:-

Priority	Description
Priority 1	Failure to implement the recommendation is likely to result in a major failure of a key organisational objective, significant damage to the reputation of the organisation or the misuse of public funds.
Priority 2	Failure to implement the recommendation could result in a failure of an important organisational objective or could have some impact on a key organisational objective.
Priority 3	Failure to implement the recommendation could lead to an increased risk exposure.

