SCOTTISH STATUTORY INSTRUMENTS

2004 No. 86

ROAD TRAFFIC

The Road Traffic (Parking Adjudicators) (Dundee City Council) Regulations 2004

Made - - - -	*4th March 2004*
Laid before the Scottish Parliament - - - -	*8th March 2004*
Coming into force - -	*1st April 2004*

The Scottish Ministers, in exercise of the powers conferred by section 73(11) and (12) of the Road Traffic Act 1991(**1**) and of all other powers enabling them in that behalf and after consultation with the Council on Tribunals and its Scottish Committee in accordance with the requirements of section 8 of the Tribunals and Inquiries Act 1992(**2**) hereby make the following Regulations:

PART I

Preliminary

Citation and commencement

1. These Regulations may be cited as the Road Traffic (Parking Adjudicators) (Dundee City Council) Regulations 2004 and shall come into force on 1st April 2004.

Interpretation

2.—(1) In these Regulations–

"the Act" means the Road Traffic Act 1991;

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

"appeal" means an appeal under section 72 of, or paragraph 5 of Schedule 6 to, the Act;

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

"hearing" means an oral hearing;

(**1**) 1991 c. 40; section 82(1) contains a definition of "prescribed" relevant to the making of these Regulations. The functions of the Secretary of State transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).
(**2**) 1992 c. 53.

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

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

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

"appellant" means the person making the appeal;

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

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

"parking authority" has the meaning ascribed to it in section 82(1) of the Act(**4**).

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

(a) a provision of the Act is a reference to that provision as applied and, where appropriate, modified by the Road Traffic (Permitted Parking Area and Special Parking Area) (Dundee City Council) Designation Order 2004(**5**);

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

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

PART II

Procedure relating to Appeals

Making an appeal

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

(2) A notice of appeal–

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

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

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

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

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

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

(**3**) Section 73(3B)(a)(i) was inserted by the Road Traffic (Permitted Parking Area and Special Parking Area) (Dundee City Council) Designation Order 2004 (S.S.I. 2004/87).
(**4**) A definition of "parking authority" was inserted by S.S.I. 2004/87.
(**5**) S.S.I. 2004/87.

Action upon receipt of notice of appeal and copy

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

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

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

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

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

(a) the original representations;

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

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

Further representations

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

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

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

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

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

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

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

Power to require attendance of witnesses

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

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

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

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

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

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

Disposing of an appeal without a hearing

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

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

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

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

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

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

Notice of time and place of hearing

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

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

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

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

Procedure at a hearing

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

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

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

(4) The following persons shall be entitled to attend the hearing of an appeal whether or not it is in private:–

(a) any adjudicator appointed under section 73(3) of the Act; or

(b) a member of the Council on Tribunals or its Scottish Committee.