

2006 No. 421

ROAD TRAFFIC AND VEHICLES

**The Traffic Management (Proceedings before Adjudicators)
Regulations (Northern Ireland) 2006**

Made - - - - - *19th October 2006*

Coming into operation - *15th November 2006*

To be laid before Parliament

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SCHEDULE

The Lord Chancellor makes the following Regulations in exercise of the powers conferred by Article 30(1) and (2) of the Traffic Management (Northern Ireland) Order 2005(a):

PART I
PRELIMINARY

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Traffic Management (Proceedings before Adjudicators) Regulations (Northern Ireland) 2006 and shall come into operation on 15th November 2006.

(2) In these Regulations—

“disputed decision” means the decision against which an appeal is brought under these Regulations;

“FAX” means the making of a facsimile copy of a document by the transmission of electronic signals;

“hearing” means an oral hearing;

“the Order” means the Traffic Management (Northern Ireland) Order 2005;

“original representations” means the representations to the Department under Article 9(1), or Article 25(3), of the Order;

“proper officer” means a member of the administrative staff provided under Article 31(1)(a) of the Order appointed to perform the duties of the proper officer under these Regulations;

“register” means the register in which appeals and decisions are recorded in accordance with regulation 10(2); and

“the 1954 Act” means the Interpretation Act (Northern Ireland) 1954(b).

(a) S.I. 2005/1964 (N.I. 14)
(b) 1954 c.33 (N.I.)

PART II
PROCEDURE RELATING TO APPEALS

Interpretation of Part II

2. In this Part—

“appeal” means an appeal under Articles 13(1) or 28(1) of the Order; and

“appellant” means the person making the appeal.

Initiating an appeal

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

(2) A notice of appeal—

- (a) shall state the name and address of the appellant;
- (b) may specify some other address as being the address to which the appellant wishes documents to be sent to him in connection with the appeal;
- (c) shall state the date and any reference number of the disputed decision; and
- (d) may include any representations which the appellant desires to make in addition to the original representations.

(3) If the notice of appeal is delivered to the proper officer later than the time limit mentioned in Article 13(1), or (as the case may be), Article 28(1), of the Order, the appellant shall include in the notice a statement of the reasons on which he relies for justifying the delay, and the adjudicator shall treat any such statement of reasons for delay as a request for extending that time limit.

(4) The appellant or his authorised representative shall sign the notice of appeal.

Action upon receipt of notice of appeal and copy of such notice

4.—(1) Upon receiving a notice of appeal the proper officer shall—

- (a) send an acknowledgement of its receipt to the appellant;
- (b) enter particulars of it in the register; and
- (c) send to the Department a copy of the notice of appeal and any direction extending the time limit for appealing.

(2) Upon receipt of a copy of a notice of appeal sent under this regulation, the Department shall within 7 days deliver to the proper officer a copy of—

- (a) the original representations;
- (b) the relevant charge notice (if any); and
- (c) the notice served under Article 9(4)(b), or (as the case may be), Article 25(5)(b), of the Order.

Further representations

5.—(1) Any party may deliver representations to the proper officer at any time before an appeal is determined.

(2) The adjudicator may invite a party to deliver 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) Any representations delivered under this regulation shall be signed by, or by the authorised representative of, the party in question.

(4) Where the appellant delivers representations to the proper officer under this regulation, the proper officer shall send a copy of the representations to the Department.

(5) Where the Department delivers representations to the proper officer under this regulation, it shall at the same time send a copy of the representations to the appellant.

(6) 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, by way of notice in Form 2, 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 documents in his custody, control or possession which relate to any matter in the proceedings.

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

(3) A person shall not be bound to comply with the notice issued 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.

(4) 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 on the trial of an action in a court of law.

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) The adjudicator shall not dispose of an appeal without a hearing until after the expiration of 4 weeks beginning on the day an acknowledgement is sent in accordance with regulation 4 unless both parties consent to the disposal taking place on an earlier date.

(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 21 days before the date so fixed (or such shorter time as the parties agree), send to each party a notice that the hearing is to be at such time and 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 before the date the hearing is then to be held (or such shorter time as the parties agree), 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 of an appeal the adjudicator shall explain the order of proceeding 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; he shall so far as appears to him appropriate seek to avoid formality in the proceedings.

(3) Any hearing of an appeal by the adjudicator 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) Any other adjudicator shall be entitled to attend the hearing of an appeal whether or not it is in private.

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

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

(7) At the hearing of an appeal, the appellant may conduct his case himself (with the assistance from any person if he wishes) or may appear and be represented by any person whether or not legally qualified.

(8) At the hearing of an appeal—

- (a) the parties shall be entitled to give evidence, to call witnesses, to question any witnesses and to address the adjudicator both on the evidence and generally on the subject matter of the appeal; and
- (b) the adjudicator may receive evidence of any fact which appears to him to be relevant notwithstanding that such evidence would be inadmissible in proceedings before a court of law.

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

Decisions on appeals

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

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

Review of adjudicator's decision

11.—(1) The adjudicator shall have power to revise or set aside any decision to dismiss or allow an appeal or any decision as to costs on the grounds (in each case) that—

- (a) the decision was wrongly made as the result of an error on the part of his administrative staff;
- (b) a party who had failed to appear or be represented at a hearing had good and sufficient reason for his failure to appear;
- (c) where the decision was made after a hearing, new evidence has become available since the conclusion of the hearing, the existence of which could not have been reasonably known of or foreseen;
- (d) where the decision was made without a hearing, new evidence has become available since the decision was made, the existence of which could not have been reasonably known of or foreseen; or
- (e) it is in the interests of justice to do so.

(2) An adjudicator shall have power, on the application of a party, to revise or set aside any interlocutory decision.

(3) An application under this regulation shall be made to the proper officer within 14 days after the date on which the decision was sent to the parties, and shall state the grounds in full.

(4) The parties shall have the opportunity to be heard on any application under this regulation; and if, having reviewed the decision, the adjudicator directs the decision to be set aside, he shall substitute such decision as he thinks fit or order a re-determination by either the same or a different adjudicator.

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

Costs

12.—(1) The adjudicator shall not normally make an order awarding costs and expenses, but may, subject to paragraph (2), make such an order—

- (a) against a party (including an appellant who has withdrawn his appeal or the Department that has consented to the appeal being allowed) if he is of the opinion that the party has acted frivolously or vexatiously or that his conduct in making, pursuing or resisting an appeal was wholly unreasonable; or
- (b) against the Department, where he considers that the disputed decision was wholly unreasonable.

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

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

Consolidation of proceedings

13.—(1) Where there are two or more appeals pending, then, should it at any time appear to the adjudicator that—

- (a) some common question of law or fact arises in both or all the appeals; or
- (b) for some other reason it is desirable to make an order under this regulation,

the adjudicator may order that some (as specified in the orders) or all of the appeals shall be considered together and may give such consequential directions as necessary.

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

PART III

APPEAL BY WAY OF A STATUTORY DECLARATION TO THE ADJUDICATOR UNDER ARTICLE 16 OF THE ORDER

Interpretation of Part III

14.—(1) This Part of these Regulations shall have effect for determining the procedure where a person has served a statutory declaration on the adjudicator under Article 16(1) of the Order.

(2) In this Part—

“appeal” means an appeal under Article 16(1) of the Order, and

“appellant” means the person making the appeal.

Initiating an appeal

15.—(1) A statutory declaration shall be in Form 3 and shall be served on the adjudicator under Article 16(1) of the Order by delivering it to the proper officer.

(2) If the statutory declaration is served on the adjudicator later than the time limit mentioned in Article 16(1) of the Order, the appellant shall include with it a statement of the reasons on which he relies for justifying the delay, and the adjudicator shall treat any such statement of reasons for delay as a request for extending that time limit.

(3) The appellant or his authorised representative shall sign the statement.

Action upon receipt of statutory declaration and copy of such declaration

16.—(1) Upon receiving a statutory declaration the proper officer shall—

- (a) send an acknowledgement of its receipt to the appellant;
- (b) enter particulars of it in the register; and
- (c) send to the Department a copy of the statutory declaration and any direction extending the time limit for serving the statutory declaration.

(2) In the case of a statutory declaration which contains a statement under Article 16(2)(a) or (b) of the Order, upon receipt of a copy of the statutory declaration sent under this regulation, the Department shall within 21 days deliver to the proper officer—

- (a) a copy of the relevant notice under Article 6 or 7 of the Order (if any);
- (b) the original representations (if any);
- (c) a copy of the notice served under Article 9(4)(b), (if any); and
- (d) any representations the Department may wish to make in relation to the matter.

(3) Where the Department delivers representations to the proper officer under paragraph (2)(d), it shall at the same time send a copy of the representations to the appellant.

Action upon receipt of copy of any representations from the Department

17.—(1) Where the Department sends a copy of its representations to the appellant under regulation 16(3), the appellant shall within 14 days of receipt of the copy of the representations, deliver to the proper officer any additional representations the appellant may wish to make in relation to the matter.

(2) Any representations delivered under regulation 16(2)(d) or this regulation shall be signed by, or by the authorised representative of, the party in question.

Procedure

18.—(1) Save as provided in sub-paragraph (3)(a), the adjudicator shall dispose of the statutory declaration without a hearing.

(2) In the case of a statutory declaration which contains a statement under Article 16(2)(b) of the Order, the adjudicator may, in particular—

- (a) if it appears to him that the appellant has made representations under Article 9 of the Order in accordance with that Article in relation to the subject matter of the case but that the Department has not received the representations or has not considered them, direct the Department to consider the representations and serve a notice of its decision under Article 9 of the Order; or
- (b) if it appears to him that the appellant has made representations under Article 9 of the Order in accordance with that Article in relation to the subject matter of the case and that the Department has considered the representations but has not served a notice of its decision under Article 9 of the Order, direct the Department to serve a notice of its decision under Article 9 of the Order, or

- (c) if it appears to him that the Department has served a notice of its decision under Article 9 of the Order but that the appellant has not received the notice, direct the Department to serve a fresh notice of its decision under Article 9 of the Order.
- (3) In the case of a statutory declaration which contains a statement under Article 16(2)(c) of the Order, the adjudicator may, in particular—
- (a) if it appears to him that the appellant has made an appeal under Article 13 of the Order in accordance with regulation 3 in relation to the subject matter of the case but that the adjudicator has not received the notice of appeal or has not considered it, proceed with the case as an appeal under Article 13 of the Order; or
 - (b) if it appears to him that an appeal under Article 13 of the Order in relation to the subject matter of the case has been considered by an adjudicator but that a notice of the adjudicator’s decision under that Article has not been served on the appellant, serve that notice on the appellant; or
 - (c) if it appears to him that an appeal under Article 13 of the Order in relation to the subject matter of the case has been considered by an adjudicator and that a notice of the adjudicator’s decision under that Article has been served on the appellant but that the appellant has not received the notice, serve a fresh notice of that decision on the appellant.

PART IV THE REGISTER

The register

19.—(1) The register shall be open for inspection by any person without charge at all reasonable hours at the accommodation provided for the adjudicators by the Lord Chancellor under Article 31(1) of the Order.

(2) The register may be kept in electronic form.

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

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

PART V GENERAL PROVISIONS

Interpretation of Part V

20. In this Part—

“appeal” means an appeal under Articles 13(1), 16(1) or 28(1) of the Order; and

“appellant” means the person making the appeal.

Miscellaneous powers of the adjudicator

21.—(1) The adjudicator may, if he thinks fit—

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

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

- (c) if the Department consents to an appeal being allowed, allow the appeal;
- (d) if both or all of the parties agree in writing on the terms of a decision to be made by an adjudicator, decide accordingly; or
- (e) adjourn a hearing.

(2) The powers of the adjudicator conferred by—

- (a) these Regulations;
- (b) Article 13(1) of the Order; and
- (c) Article 28(1) of the Order,

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

Clerical errors

22. Clerical errors in any document recording a direction or decision or order of the adjudicator, or errors arising in such a document from an accidental slip or omission, may be corrected by the proper officer on the direction of the adjudicator.

Service of documents

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

(2) Subject to paragraph (3) and (4), any such document shall be regarded as having been sent to that party if it is—

- (a) delivered to him;
- (b) left at his proper address with some person apparently over the age of sixteen years;
- (c) sent by ordinary first class post to him at that address;
- (d) transmitted to him by FAX or other means of electronic data transmission in accordance with paragraphs (3), (4) or (5).

(3) A document may be transmitted by FAX where the party has indicated in writing to the proper officer that he is willing to regard a document as having been duly sent to him if it is transmitted to a specified FAX number and the document is transmitted to that number.

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

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

(6) Where the proper address includes a numbered box number at a document exchange, delivery of a document may be effected by leaving the document addressed to that numbered box at that document exchange or at a document exchange which transmits documents every business day to that exchange; and any document which is left at a document exchange in accordance with this paragraph shall, unless the contrary is proved, be deemed to have been delivered on the second business day after the day on which it is left.

(7) For the purposes of these Regulations and section 24 of the 1954 Act in its application to this regulation—

- (a) the proper address of the appellant is the address specified in his notice of appeal pursuant to paragraph (2)(b) of regulation 3 or (if no such address is so specified) the address specified pursuant to paragraph (2)(a) of that regulation; and
- (b) the proper address of the Department is such address as the Department from time to time specifies in a notice delivered to the proper officer as being the proper address in all such proceedings.

(8) If no address for service has been specified, the proper address for the purposes of these Regulations and section 24 of the 1954 Act shall be—

- (a) in the case of an individual, his usual or last known address, or
- (b) in the case of a partnership, the principal or last known place of business of the firm within the United Kingdom, or
- (c) in the case of an incorporated or unincorporated body, the registered or principal office of the body.

(9) An appellant may at any time by notice to the proper officer change his proper address for service for the purposes of these Regulations and section 24 of the 1954 Act.

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

Delivery of documents to the proper officer

24.—(1) This regulation has effect in relation to any notice or other document required or authorised to be delivered to the proper officer.

(2) With the exception of a statutory declaration delivered under regulation 15(1), any such document may be transmitted to him by FAX or other means of electronic data transmission.

(3) Where the address of the proper officer includes a numbered box number at a document exchange, the delivery of such a document may be effected by leaving the document addressed to that numbered box at that document exchange or at a document exchange which transmits documents every business day to that exchange; and any document which is left at a document exchange in accordance with this paragraph shall, unless the contrary is proved, be deemed to have been delivered on the second business day after the day on which it is left.

(4) Regulations 3(4), 5(3), and 17(2)—

- (a) shall, in the case of a document transmitted by FAX, be satisfied if a copy of the signature of the relevant person appears on the transmitted copy; and
- (b) shall not apply in relation to a document transmitted by other means of electronic data transmission.

Signed by the authority of the Lord Chancellor

Bridget Prentice
Parliamentary Under Secretary of State
Department for Constitutional Affairs

Dated 19th October 2006

SCHEDULE

Regulations 3, 6 and 15

Form 1

Traffic Management (Northern Ireland) Order 2005

Traffic Management (Proceedings before Adjudicators) Regulations (Northern Ireland) 2006

(Article 30, Regulation 3(1))

NOTICE OF APPEAL

**IN THE MATTER OF AN APPEAL UNDER ARTICLE [13(1)][28(1)]* OF THE
TRAFFIC MANAGEMENT (NORTHERN IRELAND) ORDER 2005**

Between

Of

Appellant

And

The Department of Regional Development

Of

Respondent

TAKE NOTICE that I, the appellant, intend to appeal to an adjudicator appointed under Article 29 of the Traffic Management (Northern Ireland) Order 2005 against the Department's decision on (insert date of decision] to

[state decision appealed against and reference number]

[Any documents in connection with the appeal should be sent to the following address (if different from above: –*)]

[I wish to make the following additional representations in relation to the appeal: –*]

Form 2

Traffic Management (Northern Ireland) Order 2005

Traffic Management (Proceedings before Adjudicators) Regulations (Northern Ireland) 2006

(Article 30, Regulation 6(1))

NOTICE TO WITNESS

IN THE MATTER OF AN APPEAL UNDER ARTICLE [13(1)][28(1)]* OF THE
TRAFFIC MANAGEMENT (NORTHERN IRELAND) ORDER 2005

Between

Of

Appellant

And

The Department of Regional Development

Of

Respondent

You are required to attend at the hearing of the above named appeal at [insert place] on [insert date] at [insert time] as a witness [to answer such questions as the Adjudicator requires] [and] [to produce the following documents which are in your custody, control or possession which relate to the above matter:-] *

Dated this day of 20 .

Signed

Adjudicator

*Delete as appropriate

Note:

Under Article 30(4) of the Traffic Management (Northern Ireland) Order 2005, if you fail, without reasonable excuse, to comply with the requirements of this notice, you shall be liable on summary conviction to a fine of level 2 on the standard scale.

You may apply to the adjudicator to vary or set aside the requirements of this notice.

Expenses: You may or may not be entitled to loss of earnings and/or expenses. Claims for loss of earnings and/or expenses should be made to the proper officer.

Form 3

Traffic Management (Northern Ireland) Order 2005

Traffic Management (Proceedings before Adjudicators) Regulations (Northern Ireland) 2006

(Article 16 , Regulation 15(1))

STATUTORY DECLARATION

IN THE MATTER OF AN APPEAL UNDER ARTICLE 16(1) OF THE TRAFFIC
MANAGEMENT (NORTHERN IRELAND) ORDER 2005

Between

Of

Appellant

And

The Department of Regional Development

Of

Respondent

I of

do solemnly and sincerely declare that

[I did not receive a notice under Articles 6 or 7 of the Traffic Management (Northern Ireland) Order 2005.]*

[I made representations under Article 9 of the Traffic Management (Northern Ireland) Order 2005 but did not receive a notice of rejection.]*

[I appealed to an adjudicator under Article 13 of the Traffic Management (Northern Ireland) Order 2005 but did not receive a notice of his decision under that Article.]*

I make this declaration by virtue of Article 16(1) of the Traffic Management (Northern Ireland) Order 2005

Declarant

Declared before me this day of 20 , at in the county
court division of .

Justice of the Peace
Lay Magistrate
[Commissioner for Oaths]

* Delete as appropriate

IMPORTANT

If you knowingly or wilfully make a statement which is false in a material particular you will have committed an offence and be liable on conviction on indictment to a term of imprisonment, or a fine, or both under Article 10 of the Perjury (Northern Ireland) Order 1979.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe the procedures to be followed in relation to proceedings before adjudicators appointed under Article 29 of the Traffic Management (Northern Ireland) Order 2005 (“the Order”).

The procedures relate to –

- (a) appeals under Article 13 of the Order;
- (b) appeals under Article 28 of the Order; and
- (c) appeals by way of a statutory declaration under Article 16(1) of the Order.