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**Subject:** **PARKING AND TRAFFIC REGULATIONS OUTSIDE LONDON (PATROL) – AUTHORITY TO ENTER INTO AGREEMENT AND APPOINTMENT OF A MEMBER**

**Meeting and Date:** **Cabinet – 3 March 2014**

**Council – 5 March 2014**

**Report of:** **Roger Walton, Director of Environment and Corporate Assets**

**Portfolio Holder:** **Councillor Nigel Collor, Portfolio Holder for Property and Access**

**Decision Type:** **Non-Key Decision**

**Classification:** **Unrestricted**

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**Purpose of the report:** (1) To obtain Cabinet approval to accept changes to the existing joint committee arrangements

(2) To appoint one Councillor to serve on the PATROL Adjudication Joint Committee (PATROLAJC) and one Councillor to act as a substitute member

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**Recommendation:** (1) That Cabinet agree the changes to the existing arrangements and appoint one Councillor to serve on PATROLAJC with one Councillor to act as a substitute member

(2) That Council (with the agreement of Cabinet) appoints one Councillor to serve on the PATROLAJC and one Councillor to act as a substitute member. The term of office of the appointed Councillors to be until the appointment is terminated by the Council or until the members become disqualified from acting under the terms of the joint committee arrangements, whichever shall be the earlier

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## 1. **Summary**

This report sets out the legal basis for the establishment of PATROLAJC and seeks approval for changes to the existing Deed together with the requirement for an elected member from each constituent authority to be appointed to the committee.

In making this recommendation, consideration has been given to equality issues and it is not anticipated that this will adversely affect any of the protected groups.

## 2. **Introduction and Background**

2.1 It is a requirement under Section 73 Road Traffic Act 1991 that an independent adjudicator is appointed to hear appeals from motorists served with Penalty Charge Notices within parking areas set up under decriminalised parking regulations.

2.2 Outside London this has been achieved by setting up what has now become the Parking And Traffic Regulations Outside London Adjudication Joint Committee

(PATROLAJC), originally based in Manchester but recently re-located to East Cheshire.

- 2.3 The primary objectives of the joint committee are:
- 1) A fair adjudication service for all appellants.
  - 2) Consistency of adjudication across the service.
  - 3) A cost effective and equitable adjudication service.
  - 4) Flexibility to deal with a wide range of Local Authorities with varying levels of demand for adjudication.
  - 5) Any other function as may be conferred on the joint committee by statute.
- 2.4 PATROLAJC has been set up under Section 101 Local Government Act 1972 which provides council's with the authority to act together to fulfil this type of function.
- 2.5 PATROLAJC was established as a joint committee by a Deed dated 12<sup>th</sup> October 2001 and a subsequent Deed dated 1<sup>st</sup> May 2008, with Dover District Council being a signatory to both. With effect from 1<sup>st</sup> April 2013, Cheshire East Council took over the role of host authority under the terms of the 2008 Deed.
- 2.6 As part of the ongoing governance review of PATROLAJC, a new deed has been prepared which will replace and supersede the 2008 Deed. PATROLAJC is being asked to approve this new deed, subject to obtaining the written consent of 75% of the participating authorities. The requirement for 75% of the participating authorities to provide their written consent is required by the 2008 Deed. Currently, 185 local authorities have accepted these changes and 230 out of the 307 participating authorities are required for the agreement to take effect.
- 2.7 The principal changes to the 2008 Deed are as follows:
- 1) To simplify and update the deed. In particular, legislative references have been updated to reflect current legislation, e.g. references to the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.
  - 2) To recognise that the new deed replaces the 2008 Deed and two indemnity agreements entered into with Cheshire East Council as interim arrangements pending agreement of the new deed. These indemnity agreements related to the lease of part of Springfield House and more generally Cheshire East Council's new role as lead authority. The deed is effective from 1 April 2013, being the date on which Cheshire East Council took over as lead authority.
  - 3) To recognise Cheshire East Council as the new lead authority with effect from 1 April 2013. The procedures for the lead authority to resign as lead authority or for the appointment of the lead authority to be terminated by PATROLAJC have been simplified to allow for 12 months notice to be given. This will allow sufficient time for a replacement lead authority to be identified or, if a replacement cannot be found, then the joint committee arrangements are terminated (as PATROLAJC cannot operate without a lead authority).
  - 4) To update the terms of appointment of the lead authority. In particular:

- (i) The terms of appointment provide for greater indemnity protection for the lead authority in respect of its role as lead authority. This greater protection was requested by Cheshire East Council as a condition to taking on the role of lead authority. As Cheshire East Council is not paid to undertake this role, it is reasonable that all participating authorities share liability and responsibility equally for any liabilities arising out of its role as lead authority.
  - (ii) The terms of appointment of the lead authority envisage a non-binding service level agreement to be entered into between PATROLAJC and the lead authority, which will set out shared aims and principles, the services to be provided by the lead authority, the functions which the lead authority may delegate to the Head of Service, the estimated costs of the services, and reporting and review arrangements. The service level agreement will be reviewed on an annual basis.
  - (iii) Leases and contracts of employment entered into by the lead authority in its role as lead authority are expressly recognised as assets of PATROLAJC.
  - (iv) The terms of appointment of the lead authority can still be varied by written agreement between PATROLAJC and the lead authority, as was the case under the 2008 Deed.
- 5) To remove references to participating authorities who may adopt executive arrangements, as the PATROLAJC arrangements will not be effected by the adoption of executive arrangements.
- 6) To acknowledge the Memorandum of Understanding entered into between PATROLAJC and Adjudicators in November 2012 and to annex that Memorandum to the new deed.
- 7) To refer to the Standing Orders and Financial Standing Orders and Rules and Financial Regulations adopted by PATROLAJC in June 2012 and to annex these to the new deed.
- 8) To alter the voting requirements for variation and termination of the joint committee arrangements from requiring agreement of 75% of participating authorities to requiring agreement of a simple majority (i.e. 51%). The legal position requires a simple majority and, following a recent court decision, arrangements which require anything other than a simple majority are likely to be viewed as unlawful.
- 9) To allow for representatives of participating authorities to continue to be representatives beyond the date of the new annual meeting of PATROLAJC until their appointment is terminated by the participating authority or they cease to be a member of the participating authority or entitled to be a representative.
- 10) To recognise as a function of PATROLAJC the appointment, termination and acceptance of resignation of a lead authority. This was implicit in the 2008 Deed but not expressed.

2.8 Under Part 6 Traffic Management Act 2004, Dover District Council is an enforcement authority in relation to road traffic contraventions. As such, it is a Participating Authority in PATROLAJC.

2.9 Under Schedule 2 of the Deed, PATROLAJC shall comprise one representative from each of the Participating Authorities. This is a requirement. Until 13<sup>th</sup> May 2013, DDC had appointed an elected member as its representative to PATROLAJC. However, on 13<sup>th</sup> May 2013 a Cabinet decision was taken to no longer make this appointment on the grounds that PATROLAJC only met once a year and arrangements were in place for Officers to be informed of any developments relevant to DDC. It is recommended that this appointment be reinstated in order for DDC to comply with the requirements of a participating authority. If that member cannot attend, then it is permissible for a named substitute (also an elected member) to attend. PATROLAJC will meet at least once a year.

### 3. **Identification of Options**

3.1 Option 1: to confirm the recommendation that Cabinet agree the changes to the existing arrangements and appoint one Councillor to serve on PATROLAJC with one Councillor to act as a substitute member.

3.2 Option 2 is to not agree the changes and appointment of a representative.

### 4. **Evaluation of Options**

4.1 The preferred option is Option 1, as this will enable DDC to continue to meet its responsibilities as both an enforcement authority and a participating authority for the purposes of decriminalised parking regulation enforcement.

4.2 PATROLAJC is a joint committee established to exercise both executive and non-executive functions. This being the case, Regulation 11(7) of the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012 requires that the appointment of the members, their number and terms of office be fixed by the Council with the agreement of the Cabinet. The arrangements for PATROLAJC require the Council to establish the term of office as being until the Council terminates the appointment or until the members become disqualified from acting under the terms of the joint committee arrangements, whichever shall be the earlier.

4.3 Option 2 is not recommended as DDC will then not be a party to a process required of an enforcement authority.

### 5. **Resource Implications**

PATROL is funded by all participating authorities being charged an annual fee (paid quarterly) of 60p for every valid PCN issued. In 2011 – 2012, 16,008 PCNs were issued at a cost of £9,604, and in 2012 – 2013, 13,415 were issued at a cost of £8,049. In 2013 – 2014, the issue rate has been far less due to staff issues but it is anticipated that in 2014 – 2015, this will rise towards earlier year levels. Therefore the future cost to DDC will be in the region of £10,000 and this will be met from parking revenue.

### 6. **Corporate Implications**

6.1 Comment from the Section 151 Officer: Finance has been consulted and has no further comments to add (SJL)

6.2 Comment from the Solicitor to the Council: The Solicitor to the Council has been consulted in the preparation of this report and has no further comments to make.

6.3 Comment from the Equalities Officer: This report does not specifically highlight any equalities implications however, in discharging their responsibilities members are required to comply with the public sector equality duty as set out in section 149 of the Equality Act 2010 <http://www.legislation.gov.uk/ukpga/2010/15>

7. **Appendices**

Appendix 1 – Deed relating to parking and traffic regulations outside London Adjudication Joint Committee

8. **Background Papers**

None

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