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STATUTORY INSTRUMENTS

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**2013 No. 359**

The Civil Enforcement of Road Traffic Contraventions  
(Representations and Appeals) (Wales) Regulations 2013

PART 3

REPRESENTATIONS AND APPEALS IN RELATION  
TO THE IMMOBILISATION OF VEHICLES

**Right to make representations**

- 8.—(1) This regulation applies to the owner or person in charge of a vehicle where—
- (a) in accordance with regulation 12 of the General Provisions Regulations an immobilisation device has been fixed to a vehicle found in a civil enforcement area; and
  - (b) the owner or person in charge of the vehicle secures the release of the vehicle from the device on payment of an amount in accordance with regulation 14 of those Regulations.
- (2) A person to whom paragraph (1) applies must immediately upon the release of the vehicle be informed—
- (a) of their right to make representations to the enforcement authority in accordance with this regulation; and
  - (b) of their right to appeal to an adjudicator if those representations are not accepted,
- and that information must include a statement of the effect of paragraphs (4) and (5).
- (3) The enforcement authority must give that information, or cause it to be given, in writing.
- (4) A person to whom paragraph (1) applies may make representations to the effect—
- (a) that one or more of the grounds specified in paragraph (5) apply; or
  - (b) that, whether or not any of those grounds apply, there are compelling reasons why, in the particular circumstances of the case, the enforcement authority should refund some or all of the amount paid to secure the release of the vehicle,
- and any such representations must be in such form as may be specified by the enforcement authority.
- (5) The grounds are—
- (a) that the circumstances in which the vehicle had been permitted to remain at rest in a civil enforcement area were not circumstances in which a penalty charge was payable under regulation 4 of the General Provisions Regulations;
  - (b) that the vehicle had been permitted to remain at rest in the place where it was by a person who was in control of the vehicle without the consent of the owner;
  - (c) that the place where the vehicle was at rest was not in a civil enforcement area;
  - (d) that, in accordance with regulation 13 of the General Provisions Regulations (limitations on the power to immobilise vehicles), there was in the circumstances of the case no power

under those Regulations to immobilise the vehicle at the time at which it was immobilised or at all;

- (e) that the penalty charge or other charge paid to secure the release of the vehicle exceeded the amount applicable in the circumstances of the case; or
- (f) that there has been a procedural impropriety on the part of the enforcement authority.

(6) In determining the form for making representations an enforcement authority must act through the joint committee through which, in accordance with regulation 15 of the General Provisions Regulations, it exercises its function relating to adjudicators.

### **Duty of enforcement authority to which representations are made**

9.—(1) The enforcement authority may disregard any representations which are received by it after the end of the period of 28 days beginning with the date on which the person making them is informed under regulation 8(2) of their right to make representations.

(2) Subject to paragraph (1) it is the duty of the enforcement authority, where representations are made to it in accordance with regulation 8(4), within the period of 56 days beginning with the date on which it receives the representations—

- (a) to consider them and any supporting evidence which the person making them provides; and
- (b) to serve on that person notice of its decision as to whether or not it accepts that—
  - (i) a ground specified in regulation 8(5) applies; or
  - (ii) there are compelling reasons why, in the particular circumstances of the case, some or all of the sums paid to secure the release of the vehicle should be refunded.

(3) Where an authority serves notice under paragraph (2)(b)(i) that it accepts that such a ground applies, it must (when serving that notice) refund any sums that the person to whom the vehicle was released was required to pay under regulation 14 of the General Provisions Regulations, except to the extent (if any) to which those sums were properly paid.

(4) Where an authority serves no notice under paragraph (2)(b)(i), but does serve a notice under paragraph (2)(b)(ii) that it accepts that there are such compelling reasons, it must refund the sums referred to in paragraph (3) or such of them as it considers appropriate.

(5) Where an authority serves notice under paragraph (2)(b), that notice must—

- (a) inform the person on whom it is served of the right to appeal to an adjudicator under regulation 10;
- (b) indicate the nature of an adjudicator's power to award costs; and
- (c) describe in general terms the form and manner in which such an appeal is required to be made.

(6) Where an authority fails to comply with paragraph (2) within the period of 56 days mentioned there—

- (a) it is to be deemed to have accepted the representations and to have served notice to that effect under paragraph (2)(b); and
- (b) must immediately after the end of that period refund all such sums as are mentioned in paragraph (3).

## **Appeals to an adjudicator in relation to decisions under regulation 9**

**10.**—(1) Where an enforcement authority serves a notice of rejection under regulation 9(2)(b) in relation to representations made under regulation 8(4), the person making those representations may appeal to an adjudicator against the authority’s decision—

- (a) within the period of 28 days beginning with the date of service of that notice; or
- (b) within such longer period as an adjudicator may allow.

(2) On an appeal under this regulation, the adjudicator must consider the representations in question and any additional representations which are made by the appellant together with any representations made to the adjudicator by the enforcement authority.

(3) If the adjudicator concludes—

- (a) that any of the grounds referred to in regulation 8(5) apply; and
- (b) that the enforcement authority would have been under the duty imposed by regulation 9(3) to refund any sum if it had served notice that it accepted that the ground in question applied,

the adjudicator must direct that authority to make the necessary refund.

(4) It is the duty of an enforcement authority to which a direction is given under paragraph (3) to comply with it forthwith.

(5) If the adjudicator gives no direction under paragraph (3) but is satisfied that there are compelling reasons why, in the particular circumstances of the case, some or all of the sums paid to secure the release of the vehicle should be refunded, the adjudicator may recommend the enforcement authority to make such a refund.

(6) It is the duty of an enforcement authority to which a recommendation is made under paragraph (5) to consider afresh the making of a refund of those sums taking full account of any observations by the adjudicator and, within the period of thirty-five days (“the 35-day period”) beginning with the date on which the direction was given, to notify the appellant and the adjudicator as to whether or not it accepts the adjudicator’s recommendation.

(7) If the enforcement authority notifies the appellant and the adjudicator that it does not accept the adjudicator’s recommendation it must at the same time inform them of the reasons for its decision.

(8) No appeal to the adjudicator lies against the decision of the enforcement authority under paragraph (7).

(9) If the enforcement authority accepts the adjudicator’s recommendation it must make the recommended refund within the 35-day period.

(10) If the enforcement authority fails to comply with the requirements of paragraph (6) within the 35-day period, the authority is to be taken to have accepted the adjudicator’s recommendation and must make the recommended refund immediately after the end of that period.