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STATUTORY INSTRUMENTS

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**2005 No. 1964**

**The Traffic Management (Northern Ireland) Order 2005**

*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—

- (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.

**Commencement Information**

**II** [Art. 4](#) wholly in force at 30.10.2006; [art. 4\(3\)\(4\)\(7\)](#) in force at 20.8.2005 see [art. 1\(2\)](#); [art. 4\(1\)\(2\)\(5\)\(6\)](#) in force at 30.10.2006 by [S.R. 2006/347](#), [art. 2](#), [Sch.](#)

**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.

*Status: Point in time view as at 30/10/2006.*

*Changes to legislation: There are currently no known outstanding effects for the The Traffic Management (Northern Ireland) Order 2005, Penalty charges. (See end of Document for details)*

- (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);

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“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
- (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.

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(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).



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