

**2005 No. 652**

**TRANSPORT**

**The Road User Charging (Penalty Charges) (Scotland)  
Regulations 2005**

*Made* - - - - - *19th December 2005*

*Laid before the Scottish Parliament* *20th December 2005*

*Coming into force* - - - *30th January 2006*

The Scottish Ministers, in exercise of the powers conferred by sections 55(1), (2) and (3), 56(1), (2) and (4) and 81(2) of the Transport (Scotland) Act 2001(a) and of all other powers enabling them in that behalf, hereby make the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Road User Charging (Penalty Charges) (Scotland) Regulations 2005 and shall come into force on 30th January 2006.

**Interpretation**

2.—(1) In these Regulations—

“the Act” means the Transport (Scotland) Act 2001;

“authorised person” means any person authorised in writing by a charging authority or any of the charging authorities to act as an authorised person for the purposes of these Regulations;

“charging area” means all roads in respect of which the charging authority, or either (or any) of the charging authorities, are the local traffic authority or such of those roads as may be specified in a charging scheme;

“charging authority” and “charging authorities” shall have the meaning given in section 49(5) of the Act;

“custodian” in relation to a vehicle removed under these Regulations means—

- (a) if the vehicle has, in accordance with regulation 10 been delivered to the charging authority, that authority; or
- (b) if the vehicle has been so delivered to another person authorised by the charging authority to keep vehicles so removed in his custody, that other person;

“outstanding” in relation to a penalty charge shall be construed in accordance with regulation 10(2);

“penalty charge” means a charge imposed by a charging scheme by virtue of regulation 3; and

“vehicle” means motor vehicle.

### **Imposition of penalty charges**

**3.**—(1) A charging scheme may provide that a penalty charge shall be imposed in respect of a vehicle where—

- (a) the vehicle has been used or kept on a road in the charging area to which the scheme applies;
- (b) the vehicle falls within a class in respect of which a charge is imposed by the charging scheme;
- (c) the road is a road in respect of which a charge is imposed by the charging scheme;
- (d) events have occurred by reference to the happening of which a charge is imposed by the charging scheme; and
- (e) the charge has not been paid in full within the time and in the manner in which it is required by the charging scheme to be paid.

(2) A charging scheme may further provide that penalty charges shall be imposed in respect of any or all of—

- (a) the removal of a vehicle in accordance with regulation 10;
- (b) the storage and release from storage of a vehicle so removed; and
- (c) the sale or destruction of a vehicle so removed.

(3) A charging scheme shall specify the time and manner in which a penalty charge is to be paid and may provide that the amount of a penalty charge—

- (a) is to be reduced by such proportion as may be specified in that behalf in the scheme if it is duly paid within such time and in such manner or circumstances as may be so specified; or
- (b) is to be increased by such proportion as may be specified in that behalf in the scheme if it is not paid within such time and in such manner or circumstances as may be so specified.

### **Setting the rates of penalty charges**

**4.**—(1) The rates of penalty charges imposed by a charging scheme shall be specified in the scheme.

(2) Different rates of penalty charges may be specified for—

- (a) different classes of penalty charge;
- (b) different times;
- (c) different times of day;
- (d) different parts of a charging area;
- (e) different distances travelled;
- (f) different classes of vehicles; or
- (g) different circumstances in which penalty charges are imposed.

### **Liability for penalty charges**

**5.** Penalty charges shall be payable by the person liable to pay the initial charge in terms of Regulations 3 and 4 of Road User Charging (Liability for Charges) (Scotland) Regulations 2005<sup>(a)</sup> at the time the initial charge was incurred.

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(a) S.S.I. 2005/651.

### **Authorised persons**

6.—(1) An authorised person who is about to exercise, is in the course of exercising or has exercised, any power conferred on him under these Regulations shall, if so requested, produce his authority.

(2) A person authorised only for particular purposes under these Regulations shall not be taken to be an authorised person in relation to any other purpose.

### **Examining vehicles**

7. A charging scheme may confer power on an authorised person to examine a vehicle for the purposes of section 56(1) of the Act.

### **Entering vehicles**

8.—(1) Subject to paragraph (2) any person on whom power is conferred by virtue of regulation 7 may enter a vehicle for the purpose of section 56(2)(a) of the Act.

(2) The power conferred by paragraph (1) shall not be exercised by an authorised person who is not a constable, except in the presence of a constable.

### **Power of seizure**

9.—(1) Subject to paragraph (2) any person on whom power is conferred by virtue of regulation 8 may seize anything (if necessary by detaching it from a vehicle) and detain it as evidence of the commission of an offence under section 55(4) or (5) of the Act.

(2) The power conferred by paragraph (1) shall not be exercised by an authorised person who is not a constable.

### **Power to remove vehicles**

10.—(1) A charging scheme may make provision for any case where an authorised person has reason to believe that in respect of a vehicle which is stationary on a road in a charging area—

- (a) the vehicle is being used or kept on that road in contravention of the scheme; or
- (b) there are such number of penalty charges outstanding with respect to the vehicle as may be specified in that behalf in the scheme,

and that such other circumstances apply as may be specified in the scheme.

(2) For the purposes of these Regulations a penalty charge is outstanding if—

- (a) it is a penalty charge imposed by a scheme in respect of the use or keeping of the vehicle in question in the charging area to whom the scheme relates;
- (b) it has not been paid and is not subject to an outstanding appeal.

(3) For the purposes of paragraph (2)(b) a penalty charge is subject to an outstanding appeal if—

- (a) representations have been made to the charging authority under Regulations made by the Scottish Ministers under 64(2) of the Act and the authority has not notified its decision with respect to the representations; or
- (b) an appeal has been made to an adjudicator under those Regulations and the appeal has not been determined.

(4) A charging scheme may provide that, in such a case, the authorised person or a person acting under his direction, may remove the vehicle and deliver it to the custodian.

(5) A vehicle removed by virtue of paragraph (4) may be driven, towed or removed by an authorised person, or a person acting under his direction, by such means as are reasonable in the circumstances and any necessary steps may be taken in relation to the vehicle in order to facilitate its removal.

(6) A charging scheme may provide that the contents of a vehicle removed by virtue of paragraph (4) may be removed by an authorised person, or a person acting under his direction, from the vehicle where—

- (a) it is reasonable to do so to facilitate removal of the vehicle;
- (b) there is good reason for storing them at a different place from the vehicle; or
- (c) their condition requires them to be disposed of without delay.

### **Disposal of removed vehicles and contents**

**11.** The charging scheme may, subject to such requirements and conditions as provided in the scheme, enable the custodian of a vehicle delivered to that custodian as mentioned in regulation 10(4), to dispose of the vehicle or its contents by selling them or dealing with them as scrap.

### **Recovery of penalty charges in relation to removed vehicles**

**12.—**(1) The charging scheme shall provide that where a vehicle has been removed and delivered to the custodian, in accordance with regulation 10(4), the custodian may recover (without prejudicing the charging authority's rights to recover such amounts in full from those persons liable, pursuant to regulation 5) from the person who was the registered keeper of the vehicle when the vehicle was removed, the penalty charges prescribed by the scheme for—

- (a) its removal in accordance with regulation 10;
- (b) its storage and release from storage; and
- (c) if the vehicle has been disposed of, its sale or destruction.

(2) Where, by virtue of paragraphs (1)(a) and (b), any sum is recoverable in respect of a vehicle, the custodian shall be entitled to retain custody of it until that sum is paid.

### **Taking possession of a vehicle**

**13.—**(1) A charging scheme shall specify that a person (“the claimant”) may take possession of a vehicle (with its contents) which has been removed and delivered to a custodian and has not been disposed of under regulation 11, if the conditions specified in paragraph (2) are satisfied.

(2) The conditions are that—

- (a) the claimant satisfies the custodian that the claimant is the registered keeper of the vehicle or authorised by the registered keeper to take possession of the vehicle;
- (b) all outstanding penalty charges in respect of the vehicle are paid to the charging authority; and
- (c) any penalty charges imposed by the charging scheme in respect of the removal or the storage and release from storage of the vehicle are paid.

(3) On giving the claimant possession of a vehicle pursuant to this regulation, the custodian shall give the claimant a statement of the right of the registered keeper (or the person in charge of the vehicle at the time it was removed) to appeal, pursuant to regulations made by the Scottish Ministers under section 64(1) of the Act, of the steps to be taken in order to appeal and of the address to which representations made as mentioned in those Regulations should be sent.

St Andrew's House,  
Edinburgh  
19th December 2005

*TAVISH SCOTT*  
A member of the Scottish Executive

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations deal with the procedures relating to the imposition of penalty charges for road user charging schemes, under sections 55 and 56 of the Transport (Scotland) Act 2001. The Regulations cover requirements about the imposition and liability for penalty charges, examination of, and entry to vehicles, power of removal and disposal of vehicles, recovery of penalty charges in relation to removed vehicles, taking possession of vehicles and claims by registered keepers of vehicles after their disposal.

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**£3.00**

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