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SCOTTISH STATUTORY INSTRUMENTS

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**2022 No. 4**

**The Workplace Parking Licensing (Scotland) Regulations 2022**

**PART 6**

**Penalty charges and enforcement**

**Imposition of penalty charges**

**25.**—(1) A scheme may provide for the imposition of a penalty charge in any of the following circumstances—

- (a) where a person is providing a workplace parking place at any premises in respect of which a licence is required under a scheme and there is no licence in force in respect of those premises,
- (b) where a person is providing a workplace parking place at any premises in respect of which a licence under a scheme is in force in circumstances where the number of vehicles occupying workplace parking places at those premises exceeds the maximum number of workplace parking places covered by the licence,
- (c) where a condition in a licence under a scheme (other than a condition as to the number of vehicles which may occupy workplace parking places at the premises to which the licence relates) has been contravened.

(2) Where a scheme provides for the imposition of a penalty charge it must specify the period within which the charge must be paid and may specify different periods for different circumstances.

(3) A scheme may not specify under paragraph (2) a period of less than 28 days beginning with the date on which the penalty charge notice is served.

**Rates of penalty charges**

**26.**—(1) A scheme which provides for penalty charges must specify the amount of the penalty charge and may specify different amounts in different circumstances.

(2) A scheme may provide for the amount of the penalty charge to be reduced by a specified percentage if it is paid before the expiry of a specified period.

(3) A scheme may provide for the amount of the penalty charge to be increased by a specified percentage if—

- (a) it is not paid before the expiry of the relevant period,
- (b) representations in respect of the penalty charge are not made in accordance with regulation 30.

(4) Where a scheme makes provision as described in paragraph (3), it may specify different percentages for different purposes.

(5) In this regulation “relevant period” has the same meaning as in regulation 29(3).

**Liability to pay penalty charges by persons other than the occupier of premises**

27.—(1) This paragraph applies where the occupier of any premises has—

- (a) entered into arrangements with another person (P) for the provision by P of a parking place at those premises (whether or not for P's own use), and
- (b) provided the local authority with such evidence of those arrangements as that authority may reasonably require.

(2) Where paragraph (1) applies, any penalty charge imposed in respect of those premises must be paid by P.

**Penalty charge notices**

28.—(1) Where a local authority has reason to believe that a penalty charge is payable under provision made in a scheme, it may serve a notice (a "penalty charge notice") on the person liable to pay the charge.

(2) A penalty charge notice must state—

- (a) the amount of the penalty charge to which it relates,
- (b) the circumstances giving rise to the local authority's belief that a penalty charge is payable by the recipient of the notice,
- (c) the period specified in the scheme within which the penalty charge must be paid,
- (d) the manner in which the penalty charge must be paid,
- (e) where the scheme so provides, the amount of the reduced penalty charge if it is duly paid before the expiry of any period specified for that purpose in the penalty charge notice,
- (f) the grounds on which the person on whom the penalty charge notice is served may make representations under regulation 30 and details of where such representations are to be sent, and
- (g) the amount of the increased penalty charge which may be payable if, before the end of the relevant period determined under regulation 29(3)—
  - (i) the penalty charge is not paid, or
  - (ii) no representations are made in accordance with regulation 30.

**Charge certificates**

29.—(1) This regulation applies where a scheme makes provision as described in regulation 26(3) and—

- (a) a penalty charge notice is served on a person, and
- (b) the penalty charge to which it relates is not paid before the end of the relevant period.

(2) Where this regulation applies the local authority that served the penalty charge notice may serve on that person a statement (a "charge certificate") to the effect that the penalty charge is increased by such percentage as is specified under the scheme.

(3) The "relevant period" for the purposes of paragraph (1) means—

- (a) where a notice of rejection is served under regulation 31 but no appeal is made under regulation 32, the period of 28 days beginning with the date of service of the notice of rejection,
- (b) where there has been an unsuccessful appeal against the imposition of the charge to the First-tier Tribunal and no subsequent application for review, or review, of the First-tier

Tribunal's decision or appeal to the Upper Tribunal, the period of 28 days beginning with the date on which the decision of the First-tier Tribunal is sent to the appellant,

- (c) where an application for review of the decision of the First-tier tribunal in an appeal against the imposition of the charge has been rejected and there has been no subsequent appeal to the Upper Tribunal, the period of 28 days beginning with the date on which the decision rejecting the application for review is sent to the applicant,
- (d) where there has been an unsuccessful review of the decision of the First-tier tribunal in an appeal against the imposition of the charge and no subsequent appeal to the Upper Tribunal, the period of 28 days beginning with the date on which the decision refusing the review is sent to the applicant,
- (e) where there has been an unsuccessful appeal against the imposition of the charge to the Upper Tribunal, the period of 28 days beginning with the date on which the decision of the Upper Tribunal is sent to the appellant,
- (f) where an appeal to either the First-tier Tribunal or Upper Tribunal is withdrawn, the period of 14 days beginning with the date on which it is withdrawn, and
- (g) where no representations are made under regulation 30(1) within the payment period, that period.

(4) If representations are received by a local authority after the payment period and taken account of under regulation 30(3), the local authority must cancel a charge certificate served under paragraph (2).

(5) Where in relation to a penalty charge notice—

- (a) the relevant period for the purposes of paragraph (1) has expired, and
- (b) the increased charge for which the charge certificate provides is not paid before the end of the period of 14 days beginning with the date on which the certificate is served,

the local authority may recover the increased charge as if it were payable under an extract registered decree arbitral bearing a warrant for execution issued by the sheriff for any sheriffdom.

### **Representations in respect of penalty charges**

**30.—**(1) The recipient of a penalty charge notice may make written representations within the payment period to the local authority against the decision to serve a penalty charge notice on any of the grounds specified in paragraph (4).

(2) Where representations are made under paragraph (1), the recipient of the penalty charge notice must include evidence relevant to the specified ground relied upon.

(3) The local authority may consider whether it is appropriate to take account of representations made under paragraph (1) which are received by them after the end of the payment period.

(4) The specified grounds are—

- (a) that the alleged circumstances giving rise to liability to pay the penalty charge did not occur,
- (b) that the penalty charge, including any increased charge, exceeds the amount payable in the circumstances of the case,
- (c) that the penalty charge is payable by a different person.

(5) Where the ground mentioned in paragraph (4)(c) is relied on in any representations made under paragraph (1), those representations must include a statement of the name and address (if known) of the person who is considered by the recipient of the penalty charge notice to be responsible for payment of the penalty charge.

**Response to representations**

**31.**—(1) Where representations are made to a local authority under regulation 30(1) within the payment period, or taken account of by the local authority under regulation 30(3), it must—

- (a) consider those representations and any supporting evidence provided,
- (b) serve on the person by whom the representations were made a notice under paragraph (2) or, as the case may be, paragraph (3).

(2) Where a local authority accepts that at least one of the grounds specified in regulation 30(4) is established, it must—

- (a) cancel the penalty charge notice,
- (b) serve a notice on the person by whom the representations were made—
  - (i) stating that the penalty charge notice has been cancelled,
  - (ii) explaining the local authority's decision, and its reasons for that decision, on each of the grounds on which representations were made,
- (c) refund any penalty charge paid in relation to the cancelled penalty charge notice.

(3) Where a local authority is satisfied that none of the grounds on which representations are made is established, it must serve on the person by whom those representations were made a notice of rejection.

(4) The notice of rejection must—

- (a) state the reasons for the local authority's decision on each ground on which representations were made,
- (b) state that an appeal against the imposition of the penalty charge may be made to the First-tier Tribunal within the appeal period, or such longer period as the First-tier Tribunal may allow,
- (c) state the grounds upon which an appeal may be made (being the same grounds as are specified in regulation 30(4)),
- (d) describe in general terms the manner and form for making an appeal,
- (e) state that the First-tier Tribunal has power to make an award of expenses,
- (f) where the scheme allows for it, state that if the penalty charge is paid before the end of such period as may be specified in the scheme, the penalty charge will be reduced by a percentage specified in that scheme, and
- (g) where the scheme allows for it, state that unless, before the end of the appeal period—
  - (i) the penalty charge is paid, or
  - (ii) an appeal is made to the First-tier Tribunal against the imposition of the charge,

the local authority may issue a charge certificate under regulation 29 (and describe the effect of that regulation were it to do so).

**Appeal to the First-tier Tribunal**

**32.** A person on whom a penalty charge notice has been served may, on any of the grounds set out in regulation 30(4) and before the end of the appeal period or such longer period as the First-tier Tribunal may allow, appeal to the First-tier Tribunal against the imposition of the penalty charge if—

- (a) that person has made representations to the local authority under regulation 30(1), and
- (b) that person has received from the local authority a notice of rejection under regulation 31(3).

## **Interpretation of Part 6**

### **33. In this Part—**

“the appeal period” means the period of 28 days beginning with the date of service of the notice of rejection,

“increased charge” means the penalty charge payable in respect of a penalty charge notice in accordance with a charge certificate served in relation to that notice under regulation 29(2),

“notice of rejection” means the notice served on a person by a local authority under regulation 31,

“the payment period”, in relation to a penalty charge notice, means the period of 28 days beginning with the date of service of the notice.