
DRAFT STATUTORY INSTRUMENTS

2007 No.

**The Civil Enforcement of Parking Contraventions
(England) Representations and Appeals Regulations 2007**

PART 4

REPRESENTATIONS AND APPEALS IN RELATION TO REMOVED VEHICLES

Right to make representations about a removed vehicle

11.—(1) This regulation applies to a person where, as respects a vehicle which has been found in a civil enforcement area for parking contraventions and removed under regulations made under section 99 of the 1984 Act—

- (a) he is required to pay an amount on recovery of the vehicle under section 101A of that Act;
- (b) he receives a sum in respect of the vehicle under section 101A(2) of that Act;
- (c) he is informed that the proceeds of sale of the vehicle did not exceed the aggregate amount mentioned in that provision; or
- (d) he is informed that the vehicle was disposed of without there being any proceeds of sale.

(2) A person to whom paragraph (1) applies shall immediately upon the happening of an occurrence referred to in paragraph (1) be informed—

- (a) of his right to make representations to the enforcement authority in accordance with this regulation; and
- (b) of his right to appeal to an adjudicator if his representations are not accepted,

and that information must include a statement of the effect of paragraphs (4) and (5).

(3) The enforcement authority shall 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—
 - (i) refund some or all of the amount paid to secure the release of the vehicle or deducted from the proceeds of sale; or
 - (ii) waive its right to recover all or any of the sums due to it on account of the removal or disposal of the vehicle,

and any such representations shall be in such form as may be specified by the enforcement authority.

(5) The grounds referred to in paragraph (4)(a) are—

- (a) that the vehicle had not been permitted to remain at rest in a civil enforcement area for parking contraventions in circumstances in which a penalty charge was payable by virtue of regulation 4 of the General Regulations;

- (b) that a civil enforcement officer had not, in accordance with regulation 9 of the General Regulations, fixed a penalty charge notice to the vehicle or handed such a notice to the person appearing to him to be in charge of the vehicle, before the vehicle was removed;
 - (c) that, at the time the vehicle was removed, the power to remove the vehicle conferred by paragraph (2) of regulation 5C of the Removal and Disposal of Vehicles Regulations 1986⁽¹⁾ was, by virtue of paragraph (3) of that regulation, not exercisable;
 - (d) 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;
 - (e) that the place where the vehicle was at rest was not in a civil enforcement area for parking contraventions;
 - (f) 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
 - (g) that there has been a procedural impropriety on the part of the enforcement authority.
- (6) In determining the form for making representations the London authorities must act through the joint committee through which, in accordance with regulation 15 of the General Regulations, they exercise their functions relating to adjudicators.

Duty of enforcement authority to which representations are made

12.—(1) The enforcement authority may disregard any representations under regulation 11 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 11(2) of his right to make representations.

(2) Subject to paragraph (1), if representations are made to it in accordance with regulation 11(4), it shall be the duty of the enforcement authority, before the end of 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 11(5) applies; or
 - (ii) there are compelling reasons of the kind referred to in regulation 11(4)(b).
- (3) Where an authority serves notice under paragraph (2)(b)(i) that it accepts that a ground specified in regulation 11(5) applies it shall (when serving that notice)—
- (a) refund any sums that—
 - (i) the person to whom the vehicle was released was required to pay under section 101A(1) of the 1984 Act; or
 - (ii) were deducted from the proceeds of sale of the vehicle in accordance with section 101A(2) of that Act,
 except to the extent (if any) to which those sums were properly paid or deducted; and
 - (b) inform the person making representations that it has waived the right to recover any sum which might otherwise have been due to it by way of a penalty charge or on account of the removal, storage or disposal of the vehicle.
- (4) Where an authority serves notice under paragraph (2)(b)(ii) that it accepts that there are such compelling reasons, it shall (when serving that notice)—
- (a) refund the sums referred to in paragraph (3)(a) or such of them as it considers appropriate in the circumstances of the case; and

(1) S.I. 1986/183; relevant amending instrument is S.I. 2007/0000.

- (b) inform the person making representations that it has waived the right to recover any sum which might otherwise have been due to it by way of a penalty charge or on account of the removal, storage or disposal of the vehicle.
- (5) An authority which has waived its right to recover a sum loses its right to do so.
- (6) Where an authority serves notice under paragraph (2)(b) that it does not accept that paragraph (2)(b)(i) or (ii) is fulfilled, that notice shall—
 - (a) inform the person on whom it is served of his right to appeal to an adjudicator under regulation 13;
 - (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.
- (7) Where an authority fails to comply with paragraph (2) before the end of the period of 56 days mentioned there it shall be treated as having accepted the representations and as having served notice to that effect under paragraph (2)(b) and paragraph (3) shall apply accordingly.

Appeals to an adjudicator in relation to decisions under regulation 12

13.—(1) Where an authority serves a notice of rejection under regulation 12(2)(b) in relation to representations under regulation 11(4), the person making those representations may, before—

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

appeal to an adjudicator against the authority’s decision.

(2) On an appeal under this regulation, the adjudicator shall consider the representations in question and any additional representations that are made by the appellant.

(3) If the adjudicator concludes—

- (a) that any of the grounds referred to in subparagraphs (a) to (g) of regulation 11(5) applies; and
- (b) that the enforcement authority would have been under the duty imposed by regulation 12(3) to refund any sum if it had served notice that it accepted that the ground in question applied,

he shall direct that authority to refund that sum.

(4) It shall be the duty of an enforcement authority to which a direction is given under paragraph (3) to comply with it forthwith and the enforcement authority shall cease to have any right to recover any sum which might otherwise have been due to it by way of a penalty charge or on account of the removal, storage or disposal of the vehicle.

(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, or deducted from the proceeds of sale, should be refunded, he may recommend the enforcement authority to make such a refund.

(6) It shall be 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 (“the 35-day period”) of thirty-five days 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 shall at the same time inform them of the reasons for its decision.

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

(9) If the enforcement authority accepts the adjudicator's recommendation it shall 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 shall be taken to have accepted the adjudicator's recommendation and shall make the recommended refund immediately after the end of that period.