
DRAFT STATUTORY INSTRUMENTS

2018 No.

The Littering From Vehicles Outside London
(Keepers: Civil Penalties) Regulations 2018

PART 4

Representations and appeals

Representations against penalty notice

14.—(1) A person to whom a penalty notice is given may make written representations to the litter authority if it appears to the person that one or more of grounds A to L apply.

(2) The representations may only be made within the period of 28 days beginning with the day on which the penalty notice is given.

(3) Ground A is that the littering offence in question did not occur.

(4) Ground B is that the person was not the keeper of the vehicle at the time of the littering offence because the person became the keeper of the vehicle after the littering offence occurred.

(5) Ground C is that the person was not the keeper of the vehicle at the time of the littering offence because the person had disposed of the vehicle to another person before the littering offence occurred.

(6) Ground D is that the person was not the keeper of the vehicle at the time of the littering offence because the vehicle was a stolen vehicle when the littering offence occurred.

(7) Ground E is that the person—

(a) was engaged in the hiring of vehicles in the course of a business at the time of the littering offence, and

(b) was not the keeper of the vehicle at that time by virtue of a vehicle hire agreement.

(8) Ground F is that the person was not the keeper of the vehicle at the time of the littering offence for a reason not mentioned in grounds B to E.

(9) Ground G is that the litter authority was not, by virtue of regulation 4(5), authorised to give the person a penalty notice.

(10) Ground H is that the person is not liable to pay the fixed penalty by virtue of regulation 12.

(11) Ground I is that liability to pay the fixed penalty has been discharged in the circumstances set out in regulation 13.

(12) Ground J is that the fixed penalty exceeds the amount payable under these Regulations.

(13) Ground K is that the litter authority has failed to observe any requirement imposed on it by these Regulations in relation to the imposition or recovery of the fixed penalty.

(14) Ground L is that there are compelling reasons why, in the particular circumstances of the case, the penalty notice should be cancelled (whether or not any of grounds A to K apply).

(15) If a person makes representations that ground B applies, the representations must include the name and address of the other person from whom the vehicle was acquired (if known).

- (16) If a person makes representations that ground C applies, the representations must include—
- (a) the name and address of the other person to whom the vehicle had been disposed of (if known), or
 - (b) a statement that the name and address of that person is not known.
- (17) If a person makes representations that ground D applies, the representations must include the crime reference number, insurance claim reference or other evidence of the vehicle’s theft.
- (18) If a person makes representations that ground E applies, the representations must include—
- (a) a statement signed by or on behalf of the person to the effect that at the time of the littering offence the vehicle was hired to a named person under a vehicle hire agreement with the person, and
 - (b) a copy of the vehicle hire agreement.
- (19) In paragraph (7)(b), the reference to a person (“P”) being a keeper of a vehicle by virtue of a vehicle hire agreement includes a reference to any period during which, with the consent of the person hiring the vehicle, P continues in possession of the vehicle as hirer, after the expiry of any period specified in the agreement but otherwise on the terms and conditions specified in it.
- (20) In this regulation, “vehicle hire agreement” means an agreement which—
- (i) provides for a vehicle to be let to a person for a period of any duration (whether or not the period is capable of extension by agreement between the parties), and
 - (ii) is not a hire-purchase agreement within the meaning given by section 189(1) of the Consumer Credit Act 1974⁽¹⁾.

Functions of litter authority following representations

- 15.—**(1) A litter authority which receives representations under regulation 14 must—
- (a) consider them and any supporting evidence which the person making the representations provides, and
 - (b) decide whether or not it accepts that one or more of the grounds in regulation 14 applies.
- (2) If the litter authority accepts that one or more of the grounds in regulation 14 applies, it must cancel the penalty notice and inform the person who made the representations of the cancellation in writing.
- (3) If the litter authority does not accept that one or more of the grounds in regulation 14 applies, it must give a notice of rejection to the person who made the representations.
- (4) A notice of rejection is a notice informing the person who made the representations that the litter authority does not accept that one or more grounds in regulation 14 applies.
- (5) The notice of rejection must state —
- (a) the litter authority’s decision and the reasons for it,
 - (b) that the person has a right to appeal to an adjudicator within the period of 28 days beginning with the day on which the notice of rejection is given,
 - (c) in general terms, the form and manner in which an appeal to an adjudicator may be made, and
 - (d) that an adjudicator has power to award costs against a person appealing against the decision set out in the notice of rejection.
- (6) The litter authority must carry out its functions under this regulation within the period of 56 days beginning with the day on which the representations are received.

(1) 1974 c.39. “Hire-purchase agreement” is defined in section 189.

- (7) If a litter authority fails to comply with this regulation, it is deemed to have—
- (a) decided that it accepts that one or more of the grounds in regulation 14 applies, and
 - (b) cancelled the penalty notice under paragraph (2).

Appeals against notice of rejection

16.—(1) A person who is given a notice of rejection (see regulation 15(3) to (5)) may appeal against it.

(2) The appeal must be made to an adjudicator (see regulation 18).

(3) The appeal must (except in the circumstances described in paragraph (4)) be made within the period of 28 days beginning with the day on which the notice of rejection is given.

(4) An adjudicator may allow a longer period within which an appeal may be made (whether or not the period of 28 days has expired).

(5) If the adjudicator concludes that one or more of the grounds in regulation 14 applies, the adjudicator must allow the appeal.

(6) Where an appeal is allowed, the adjudicator may give written directions to the litter authority which the adjudicator considers appropriate for the purpose of giving effect to the adjudicator's decision.

(7) Despite not allowing an appeal, an adjudicator may give a written recommendation to the litter authority that it cancel the penalty notice if the condition in paragraph (8) is met.

(8) The condition is that the adjudicator is satisfied that there are compelling reasons why, in the particular circumstances of the case, the penalty notice should be cancelled.

(9) An adjudicator must dismiss an appeal if the adjudicator concludes that—

- (a) none of the grounds in regulation 14 applies, and
- (b) there are no compelling reasons why the penalty notice should be cancelled.

Functions of litter authority following adjudication

17.—(1) A litter authority must comply with any direction given to it under regulation 16(6) as soon as practicable.

(2) A litter authority which is the subject of a recommendation under regulation 16(7) must reconsider whether to cancel the penalty notice, taking account of any observations made by the adjudicator.

(3) Within the period of 35 days beginning with the day on which the recommendation under regulation 16(7) is made, the authority must inform the appellant and the adjudicator in writing—

- (a) whether or not it accepts the adjudicator's recommendation,
- (b) if it does accept the adjudicator's recommendation, that the penalty notice is cancelled, and
- (c) if it does not accept the adjudicator's recommendation, of the reasons for its decision.

(4) No appeal to an adjudicator lies against the decision of the litter authority under paragraph (3).

(5) If a litter authority fails to comply with paragraph (3), it is deemed to have accepted the adjudicator's recommendation and to have cancelled the penalty notice.

Adjudicators

18.—(1) A person who at any time holds office as an adjudicator for the purposes of Part 6 of the Traffic Management Act 2004⁽²⁾ by virtue of an appointment under regulation 17 of the Civil Enforcement of Parking Contraventions (England) General Regulations 2007⁽³⁾ also holds office at that time (and on the same terms) as an adjudicator for the purposes of these Regulations.

(2) The litter authorities must—

- (a) provide, or make arrangements for the provision of, accommodation, administrative staff and facilities for adjudicators,
- (b) determine the places where adjudicators are to sit,
- (c) appoint a member of the administrative staff to fulfil the functions of the proper officer (for the purposes of the Schedule to the RUCS Regulations 2013 as it applies by virtue of regulation 19),
- (d) fix the date by which each adjudicator is to make the report mentioned in paragraph (5), and
- (e) make and publish an annual report to the Secretary of State on the discharge by adjudicators of their functions under these Regulations.

(3) The functions in paragraph (2) must be discharged by the joint committee or joint committees responsible for discharging functions relating to parking contraventions in accordance with regulation 16(1) of the Civil Enforcement of Parking Contraventions (England) General Regulations 2007.

(4) The litter authorities must pay the expenses associated with the adjudication process (including the expenses of the joint committee or joint committees and the remuneration of adjudicators)—

- (a) in such proportions as they may decide, or
- (b) in default of any decision, as may be determined by an arbitrator nominated by the Chartered Institute of Arbitrators on the application of any litter authority.

(5) Each adjudicator must prepare a report of the performance of the adjudicator’s functions under these Regulations in each financial year.

(6) The report relating to a financial year must be given to the joint committee or joint committees as soon as practicable after the end of the financial year.

(7) For the purposes of paragraphs (5) and (6), each of the following is a “financial year”—

- (a) the period beginning with 1st April 2018 and ending with 5th April 2019, and
- (b) each successive period of 12 months.

Appeal procedure

19.—(1) The Schedule to the RUCS Regulations 2013 (which relates to procedure in adjudication proceedings) applies in respect of appeals made under regulation 16 as it applies in respect of adjudication proceedings under those Regulations but as if—

- (a) each reference to a charging authority (except that in paragraph 9(1)) were a reference to a litter authority;
- (b) each reference to a notice of rejection were a reference to a notice of rejection given in accordance with regulation 15(3) to (5) of these Regulations;
- (c) each reference to a proper officer were to a proper officer appointed in accordance with regulation 18(2)(c) of these Regulations;

(2) 2004 c.18.

(3) S.I. 2007/3483.

- (d) in paragraph 1(1) “appeal period” were defined as meaning the 28-day period referred to in regulation 16(3) of these Regulations;
- (e) in paragraph 1(2)—
 - (i) in the definition of “the original representations”, the reference to regulation 8(1), 32(3) or 35(3) (as the case may be) of the RUCS Regulations 2013 were a reference to regulation 14(1) of these Regulations;
 - (ii) the definition of “the relevant notice of rejection” were omitted;
- (f) in paragraph 2(2)(d)—
 - (i) the reference to a penalty charge notice were a reference to a penalty notice;
 - (ii) the reference to a penalty charge were a reference to a fixed penalty;
- (g) in paragraph 3(4)(a) the reference to a penalty charge notice were a reference to a penalty notice;
- (h) in paragraph 3(4)(c) the word “relevant” were omitted;
- (i) in paragraph 4(1) the reference to regulations 8(3), 32(4) or 35(4) (as the case may be) of the RUCS Regulations 2013 were a reference to regulation 14(3) to (14) of these Regulations;
- (j) for paragraph 5 there were substituted—

“Adjudicator’s power to request attendance of witnesses and production of documents

5.—(1) The adjudicator may, by notice in writing served on any person (including a party to the proceedings), request that person—

- (a) to attend, at a time and place specified by the adjudicator, to give evidence at the hearing of an appeal; and
- (b) to produce any documents in that person’s custody or under that person’s control, relating to any matter in the proceedings.

(2) An adjudicator may award the necessary expenses of any person other than the appellant who complies with a request under sub-paragraph (1).”.

- (k) in paragraph 9(1) the reference to a charging authority were a reference to a litter authority and any authorised officer of the authority (see regulation 10(1));
- (l) in paragraph 11(1) there were inserted at the end “(including, where, despite not allowing the appeal, the adjudicator recommends that the penalty notice be cancelled, the reasons for that recommendation)”;
- (m) in paragraph 17(1) the reference to the RUCS Regulations 2013 were a reference to these Regulations;
- (n) in paragraph 17(4) the reference to an enforcement authority were a reference to a litter authority;
- (o) Part 4 were omitted;
- (p) in paragraph 21(1) the reference to the RUCS Regulations 2013 were a reference to these Regulations.

(2) Any aspect of procedure in respect of appeals under regulation 16 not provided for under this regulation may be regulated by the adjudicators themselves.

Evidence produced by a recording device

20.—(1) Evidence of a fact relevant to proceedings conducted under regulation 19 may be given by the production of—

- (a) a record produced by a recording device, and
- (b) (in the same or another document) a certificate stating the circumstances in which the record was produced, signed by a person authorised to do so by the litter authority which installed the device.

(2) A “recording device” is a camera or other device capable of producing a record of—

- (a) the presence of a particular vehicle on the litter authority’s land (within the meaning given by regulation 4(4)), and
- (b) the date and time at which the vehicle is present,

and includes any equipment used in conjunction with the camera or other device for the purpose of producing such a record.

(3) A document purporting to be a record or certificate of the kind described in paragraph (1) is to be deemed to be such a record or certificate unless the contrary is proved.