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DRAFT STATUTORY INSTRUMENTS

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**2022 No.**

The Civil Enforcement of Road Traffic Contraventions  
(Representations and Appeals) (England) Regulations 2022

PART 4

Representations and appeals in relation to removed vehicles

**Representations about a removed vehicle**

**11.**—(1) This regulation applies where, in relation to a vehicle found in a civil enforcement area for parking contraventions and removed under regulations made under section 99 of the RTRA 1984<sup>(1)</sup>, a person (“P”)—

- (a) is required to pay an amount on recovery of the vehicle under section 101A(1) of that Act<sup>(2)</sup>,
- (b) receives a sum in respect of the vehicle under section 101A(2) of that Act,
- (c) is informed that the proceeds of sale of the vehicle did not exceed the amount of the relevant charges<sup>(3)</sup>, or
- (d) is informed that the vehicle was disposed of without there being any proceeds of sale.

(2) P must, immediately upon the happening of the occurrence referred to in paragraph (1), be notified, in writing—

- (a) of their right to make representations to the enforcement authority in accordance with this regulation, including the effect of paragraphs (3) and (4),
- (b) that any representations made outside the period of 28 days beginning with the date on which the person is so notified may be disregarded,
- (c) of the form in which the representations must be made,
- (d) of the address to which representations must be sent, including, as appropriate—
  - (i) an email address,
  - (ii) a FAX telephone number,
  - (iii) the address of any website where representations may be submitted online (and the place on that website where the relevant facility may be accessed),as well as a postal address, and

- (e) of that person’s right to appeal to an adjudicator if those representations are not accepted.

(3) P may make representations to the enforcement authority to either or both of the following effects that—

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(1) The Regulations that currently apply in England are the Removal and Disposal of Vehicles Regulations 1986 (S.I. 1986/183).  
(2) Section 101A was inserted by paragraph 3(2) of Schedule 11 to the TMA 2004.  
(3) “The relevant charges” is defined, in the case of a vehicle found in a civil enforcement area for parking contraventions, in section 101A(3) of the RTRA 1984.

- (a) one or more of the grounds specified in paragraph (4) apply, or
  - (b) 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 that was paid to secure the release of the vehicle,
    - (ii) refund some or all of the amount that was deducted from the proceeds of sale of the vehicle in respect of the relevant charges, or
    - (iii) waive its right to recover all or any of the sums due to it on account of the removal or disposal of the vehicle.
- (4) The grounds mentioned in paragraph (3)(a) are that—
- (a) the circumstances in which the vehicle had been permitted to remain at rest in a civil enforcement area for parking contraventions were not circumstances in which a penalty charge was payable by virtue of regulation 5 of the 2022 General Regulations;
  - (b) a civil enforcement officer had not, in accordance with regulation 9 of the 2022 General Regulations, fixed a penalty charge notice to the vehicle or handed such a notice to the person appearing to that officer to be in charge of the vehicle, before the vehicle was removed;
  - (c) 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(4) was, by virtue of paragraph (3) of that regulation, not exercisable;
  - (d) 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;
  - (g) that there has been a procedural impropriety on the part of the enforcement authority.
- (5) Representations under this regulation must be made in such form as may be specified by the enforcement authority.
- (6) In determining the form for making representations, the enforcement authority must act through the joint committee.

### **Duties of an enforcement authority to which representations are made under regulation 11**

**12.**—(1) This regulation applies where an enforcement authority receives representations under regulation 11.

(2) The enforcement authority may disregard any representations which it receives after the end of the period of 28 days beginning with the date on which the person making them (“R”) is notified under regulation 11(2) of their right to make representations.

(3) If the representations—

- (a) are made in accordance with regulation 11(3), and
- (b) are not disregarded by the enforcement authority under paragraph (2),

the authority must, within the period of 56 days beginning with the date on which the enforcement authority receives the representations (“the 56-day period”), comply with the requirements specified in paragraph (4).

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(4) S.I. 1986/183. Regulation 5C was inserted by S.I. 2007/3484, it was amended by S.I. 2021/461.

- (4) The requirements are that the enforcement authority must—
  - (a) consider the representations and any supporting evidence which R provides, and
  - (b) serve on R a notice of its decision (a “decision notice”) as to whether or not it accepts that—
    - (i) there are compelling reasons of the kind referred to in regulation 11(3)(b), or
    - (ii) any of the grounds specified in regulation 11(4) apply.
- (5) If the enforcement authority accepts that any of the grounds specified in regulation 11(4) apply, it must, when serving its decision notice—
  - (a) refund any amount that was—
    - (i) paid by R to secure the release of the vehicle under section 101A(1) of the RTRA 1984, or
    - (ii) deducted from the proceeds of sale of the vehicle in respect of the relevant charges in accordance with section 101A(2) of that Act, and
  - (b) inform R 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.
- (6) Paragraph (7) applies where the enforcement authority—
  - (a) accepts that there are compelling reasons of a kind mentioned in regulation 11(3)(b), but
  - (b) if the representations include any of the grounds specified in regulation 11(4), it does not accept that any of the stated grounds apply.
- (7) Where this paragraph applies, the enforcement authority must, when serving its decision notice—
  - (a) refund the relevant amount, and
  - (b) inform R 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.
- (8) For the purposes of paragraph (7) “the relevant amount” means—
  - (a) where R was required to pay an amount to secure the release of the vehicle under section 101A(1) of the RTRA 1984—
    - (i) that amount, or
    - (ii) so much of that amount as the enforcement authority considers appropriate in the circumstances of the case;
  - (b) where an amount was deducted from the proceeds of sale of the vehicle in respect of the relevant charges in accordance with section 101A(2) of the RTRA 1984—
    - (i) the amount so deducted, or
    - (ii) so much of that amount as the enforcement authority considers appropriate in the circumstances of the case.
- (9) Paragraphs (5) and (7) do not require an enforcement authority to refund any sum to the extent (if any) to which it was properly paid or deducted.
- (10) An authority which has waived its right to recover a sum loses its right to do so.
- (11) Where an authority does not accept that there are any compelling reasons of a kind mentioned in regulation 11(3)(b), or that any of the grounds specified in regulation 11(4) apply, its decision notice must—
  - (a) inform R of R’s 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.
- (12) Where an enforcement authority fails to comply with the requirements in paragraph (4) before the end of the 56-day period, the authority—
  - (a) is to be deemed to have accepted the representations and served a decision notice to that effect, and
  - (b) must refund—
    - (i) the relevant charges that R was required to pay under section 101A(1) of the RTRA 1984, or
    - (ii) the amount that was deducted from the proceeds of sale of the vehicle in respect of the relevant charges in accordance with section 101A(2) of that Act.

### **Appeal to an adjudicator against enforcement authority's decision to reject representations**

- 13.**—(1) A person (“P”) may appeal to an adjudicator against an enforcement authority’s decision not to accept that—
- (a) there are compelling reasons of a kind mentioned in regulation 11(3)(b), or
  - (b) any of the grounds specified in regulation 11(4) apply.
- (2) An appeal under this regulation must be made within—
- (a) the period of 28 days beginning with date of service of the decision notice under regulation 12(4)(b) informing P of P’s right to appeal under this regulation, or
  - (b) such longer period as the adjudicator may allow.
- (3) Parts 1 to 3 of Schedule 1 make further provision in connection with appeals (including procedural matters).
- (4) On an appeal under this regulation, the adjudicator must consider—
- (a) the representations made by the appellant under regulation 11(3), and
  - (b) any additional representations that are made by the appellant.
- (5) If the adjudicator concludes that—
- (a) any of the grounds specified in regulation 11(4) apply, and
  - (b) the enforcement authority would have been under the duty imposed by regulation 12(5) to refund any sum if it had served a notice that it accepted that the ground in question applied,
- the adjudicator must direct the authority to refund that sum.
- (6) An enforcement authority which is given a direction under paragraph (5)—
- (a) must comply with the direction immediately, and
  - (b) ceases 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.
- (7) If the adjudicator—
- (a) does not make a direction under paragraph (5), but
  - (b) is satisfied that there are compelling reasons why, in the particular circumstances of the case, some or all of the relevant charges paid to secure the release of the vehicle, or of the amount deducted from the proceeds of sale in respect of the relevant charges, should be refunded,
- the adjudicator may recommend that the enforcement authority make such a refund.
- (8) An enforcement authority to which a recommendation is made under paragraph (7) must—

- (a) consider afresh the making of a refund of those sums taking full account of any observations by the adjudicator, and
  - (b) within the period of 35 days beginning with the date on which the recommendation was given (“the 35-day period”), notify the appellant and the adjudicator as to whether or not it accepts the adjudicator’s recommendation.
- (9) If the enforcement authority does not accept the recommendation, the notification under paragraph (8)(b) must include the reasons for that decision.
- (10) No appeal to the adjudicator lies against the decision of the enforcement authority not to accept the adjudicator’s recommendation.
- (11) If the enforcement authority accepts the adjudicator’s recommendation it must make the recommended refund within the 35-day period.
- (12) If the enforcement authority fails to comply with the requirements of paragraph (8) within the 35-day period, the authority—
- (a) is to be deemed have accepted the adjudicator’s recommendation, and
  - (b) must make the recommended refund.