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SCHEDULES

SCHEDULE 2

Section 23

REPRESENTATIONS, APPEALS AND ENFORCEMENT

Persons to whom Schedule applies

- 1 (1) This Schedule applies to a person (in this Schedule referred to as a “relevant person”)
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- (a) on whom a notice is served under subsection (2) of section 16 (preliminary procedure in other cases) of this Act and who in accordance with the requirements of the notice pays—
 - (i) the outstanding penalty charges; or
 - (ii) a bond in the prescribed sum;
 - (b) who pays or causes to be paid a penalty charge or other charge to recover a vehicle after it has been removed from a road in accordance with section 17 (immobilisation and removal of vehicles) of this Act;
 - (c) who pays or causes to be paid a bond in accordance with—
 - (i) subsection (9) of the said section 17; or
 - (ii) subsection (1) of section 20 (payment of bond to secure removal) of this Act;
 - (d) who receives any sum in respect of a vehicle under section 21 (claim by the owner of a vehicle after its disposal) of this Act after the vehicle has been sold or destroyed in accordance with section 18 (disposal of removed vehicles and contents) of this Act; or
 - (e) who is informed that the proceeds of its disposal do not exceed the amount of the penalty charges and other charges payable in respect of the vehicle in accordance with section 21 (claim by the owner of a vehicle after its disposal) of this Act.
- (2) In this Schedule “the relevant authority”, in relation to the events referred to in paragraphs (a) to (e) of sub-paragraph (1) above is—
- (a) in the case of the said paragraph (a), the authority who served the notice;
 - (b) in the case of the said paragraph (b), the authority to whom the penalty charge is paid or is caused to be paid;
 - (c) in the case of the said paragraph (c), the relevant person to whom the bond is paid or caused to be paid;
 - (d) in the case of the said paragraph (d), the authority from whom the sum is received;
 - (e) in the case of the said paragraph (e), the authority by whom the information is given.

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Right to make representations

- 2 (1) A relevant person shall, at the relevant time be informed by notice in writing, by or on behalf of the relevant authority, of his right to make representations under this paragraph and his right of appeal under paragraph 3 below.
- (2) A relevant person may make representations in writing to the relevant authority on one or more of the grounds mentioned in sub-paragraph (3) below.
- (3) The grounds are—
- (a) that in the particular circumstances of the case, the removal or disposal of the vehicle was not authorised by Part 5 (non-payment of penalty charges) of this Act;
 - (b) that the penalty charge, other charge or bond paid to secure the release or recovery of the vehicle exceeded the amount applicable in the circumstances of the case;
 - (c) that the outstanding penalty charges were all incurred before the owner of the vehicle at the relevant time had become the owner of that vehicle;
 - (d) that the number of outstanding penalty charges incurred after he had become the owner was fewer than three;
 - (e) that the outstanding penalty charges have all been paid;
 - (f) that the relevant person is a vehicle-hire firm and—
 - (i) the vehicle in question was, at the time the outstanding penalty charges were incurred, hired from that firm under a hiring agreement; and
 - (ii) the person hiring it had signed a statement of liability acknowledging his liability in respect of any penalty charge incurred in respect of the vehicle during the currency of the hiring agreement;
 - (g) that, in respect of an outstanding penalty charge (other than in a case where subsection (4)(b) of section 14 (interpretation of Part 5) of this Act applies), the owner of the vehicle did not receive the penalty charge notice in question (in the case where the outstanding penalty charge arose from a penalty charge notice which purported to have been served by the London authority following the detection of a contravention of an enactment by a camera or other device);
 - (h) that, in respect of an outstanding penalty charge (other than in a case where subsection (4)(b) of the said section 14 applies), the owner of the vehicle did not receive a notice to owner (in the case where the penalty charge arose from a penalty charge notice in respect of which a notice to owner may be served);
 - (i) that the owner of the vehicle made representations to the London authority against the original penalty charge but did not receive a notice of rejection from the London authority;
 - (j) that the owner of the vehicle appealed to a parking adjudicator, a traffic adjudicator or a road user charging adjudicator against the rejection by the London authority of representations made by him but had no response to the appeal.
- (4) A relevant authority may disregard any representations received by them after the end of the period of 28 days beginning with the date on which the relevant person is informed in accordance with sub-paragraph (1) above of his right to make representations.

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- (5) It shall be the duty of the relevant authority to whom representations are duly made under this paragraph, before the end of the period of 56 days beginning with the day on which they receive the representations—
- (a) to consider them and any supporting evidence which the person making them provides; and
 - (b) to serve on that person a notice of their decision as to whether or not they accept that the ground in question has been established.
- (6) Subject to sub-paragraph (11) below, where a relevant authority serve notice under sub-paragraph (5)(b) above that they accept that a ground has been established they shall (when serving that notice or as soon as practicable thereafter) refund (if they have not done so already)—
- (a) any bond paid to them—
 - (i) in accordance with subsection (12)(b) of section 15 (preliminary procedure where ownership details not known) of this Act;
 - (ii) in response to a notice under subsection (2) of section 16 (preliminary procedure in other cases) of this Act;
 - (iii) under subsection (9) of section 17 (immobilisation and removal of vehicles) of this Act;
 - (iv) in accordance with subsection (3)(c) of section 19 (taking possession of a vehicle) of this Act; or
 - (v) under section 20 (payment of bond to secure removal) of this Act; and
 - (b) any penalty charge or other charges—
 - (i) paid to recover the vehicle after it had been removed from a road;
 - (ii) deducted from the proceeds of sale of the vehicle,except to the extent (if any) to which those sums were properly paid or deducted.
- (7) Where a relevant authority serve notice under sub-paragraph (5)(b) above that they do not accept that a ground has been established, that notice shall—
- (a) inform the relevant person of his right to appeal to an adjudicator under paragraph 3 below;
 - (b) indicate the nature of the adjudicator's power to award costs against any person appealing to him under that paragraph;
 - (c) describe in general terms the form and manner in which such an appeal is required to be made; and
 - (d) provide such other information as the relevant authority consider appropriate.
- (8) Where a relevant authority fail to comply with sub-paragraph (5) above before the end of the period of 56 days there mentioned—
- (a) they shall be deemed to have accepted that the ground in question has been established and to have served notice to that effect under sub-paragraph (5) (b) above; and
 - (b) sub-paragraph (6) above shall have effect as if it required any refund to be made immediately after the end of that period.
- (9) Any notice required to be served under this paragraph may be served personally or by post or in such manner as is agreed between the relevant authority and the relevant person.

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- (10) Where the person on whom any document is required to be served by sub-paragraph (5) above is a body corporate, the document is duly served if it is sent by post or in any such manner as is agreed to the secretary or clerk to that body.
- (11) Where a relevant authority serve notice under sub-paragraph (5)(b) above that they accept that a ground has been established—
- (a) under sub-paragraph (3)(g) to (i) above, with regard to a valid notice that was sent but not received, a London authority may, in respect of each outstanding penalty charge for which the ground has been established serve a replacement penalty charge notice, notice to owner or notice of rejection, as the case may be; or
 - (b) under sub-paragraph (3)(j) above with regard to a response to an appeal that was sent but not received, a parking, traffic or road user charging adjudicator may, in respect of an outstanding penalty charge for which the ground has been established serve a replacement response to the appeal at the request of a London authority.
- (12) A notice or response served under sub-paragraph (11) above shall be served on the person who made the representations, or, in the case where that person has also established a ground under sub-paragraph (3)(c) or (d) above, on the person whom the authority believes to have been the owner of the vehicle at the time when the penalty charge in question was incurred.
- (13) A notice or response served under sub-paragraph (11) above shall, for the purposes of the enactment in respect of which the relevant outstanding penalty charge in question arose be deemed to have been issued or served in compliance with any time limits under the enactment.
- (14) Where a relevant authority serve notice under sub-paragraph (5)(b) above that they accept that a ground has been established under sub-paragraph (3)(c) to (j) above in the case of some, but not all, of the outstanding penalty charges, sub-paragraph (6) above shall have effect as follows—
- (a) if the number of remaining outstanding penalty charges in respect of which the representations were made is fewer than three, the only penalty charges which the relevant authority must refund are those in respect of which they accept that a ground was established and they must refund any bond;
 - (b) if the number of remaining outstanding penalty charges in respect of which the representations were made is three or more, the relevant authority need only refund the penalty charges in respect of which they accept that a ground was established and they need not refund any bond, or other penalty charges or charges.
- (15) In this paragraph—
- “hiring agreement” and “vehicle-hire firm” have the same meanings as in section 66 of the Road Traffic Offenders Act 1988 (c. 53); and
 - “relevant time” means the time of the happening of an event such as is referred to in paragraph 1(1)(a) to (e) of this Schedule.

Right to appeal to an adjudicator

- 3 (1) Where a relevant authority serve notice under paragraph 2(5)(b) above that they do not accept that a ground on which representations were made under paragraph 2

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above has been established, the person making those representations may appeal to an adjudicator against the authority's decision, before—

- (a) the end of the period of 28 days beginning with the date of service of the notice; or
- (b) such longer period as an adjudicator may allow following consultation with the relevant authority.

(2) An adjudicator may allow a longer period for an appeal under sub-paragraph (1)(b) above whether or not the period specified in sub-paragraph (1)(a) above has already expired.

(3) On an appeal under this paragraph, the adjudicator shall consider the representations in question and any additional representations which are made by the appellant on any of the grounds mentioned in paragraph 2(3) above and, if he concludes—

- (a) that any of the representations are justified; and
- (b) that the relevant authority would have been under the duty imposed by paragraph 2(6) above to refund any sum if they had served notice that they accepted that the ground in question had been established,

he shall direct the authority to make the necessary refund.

(4) It shall be the duty of a relevant authority to whom such a direction is given to comply with it.

Representations and appeals in cases where bond is paid

4 (1) If representations are made to a relevant authority in a case where paragraph 1(1)(a)(ii) or 1(1)(c) above applies, the relevant authority shall issue a certificate to the relevant person.

(2) A certificate under sub-paragraph (1) above shall state—

- (a) that the certificate is issued under that sub-paragraph;
- (b) the date on which the certificate was issued;
- (c) the registration mark of the vehicle;
- (d) the effect of sub-paragraph (3) below.

(3) A vehicle may not be immobilised or removed under section 17 (immobilisation and removal of vehicles) of this Act if—

- (a) a certificate issued under sub-paragraph (1) above is being displayed prominently in or on the vehicle to which it relates; and
- (b) either—
 - (i) the period mentioned in paragraph 2(4) above, after which the relevant authority may disregard any representations received by them, has not expired; or
 - (ii) that period has expired and representations were received by them before its expiry and either of the conditions of sub-paragraph (4) below are met.

(4) The conditions are—

- (a) no notice has yet been served by the relevant authority under paragraph 2(5)(b) above;
- (b) the relevant authority have notified the person who made them that they reject the grounds of the representations; and—

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- (i) the period allowed for making an appeal to an adjudicator in respect of the notification of rejection of representations has not yet expired; or
 - (ii) an appeal has been made to the adjudicator and no conclusion has yet been reached by the adjudicator under paragraph 3(3) above.
- (5) This sub-paragraph applies if—
- (a) a person who is entitled to—
 - (i) make representations under paragraph 2 above; or
 - (ii) appeal to an adjudicator under paragraph 3 above,
 fails to do so within the period mentioned in the paragraph in question; and
 - (b) that person has paid or caused to be paid a bond in accordance with section 20 (payment of bond to secure removal) of this Act.
- (6) If sub-paragraph (5) above applies, the London authority in question shall return the bond to the person in question if he has paid or caused to be paid the outstanding penalty charges in question and any charges incurred in relation to them under this Act.
- (7) The relevant authority may set off any costs in recovering outstanding penalty charges against the bond, and shall return the balance of the bond (if any) to the person in question if—
- (a) sub-paragraph (5) above applies; and
 - (b) the person in question has not paid or caused to be paid the outstanding penalty charges in question or any penalty incurred in relation to them under Part 5 (non-payment of penalty charges) of this Act.

Adjudicators

- 5 (1) Functions of adjudicators under this Schedule shall be discharged by—
- (a) the persons who are appointed as parking adjudicators under section 73 of the 1991 Act (until that section is repealed by section 98 of the 2004 Act); or
 - (b) the persons appointed under regulations made under section 81 of the 2004 Act (adjudicators) as adjudicators for the purposes of Part 6 of that Act (after section 73 is repealed).
- (2) When any of the outstanding penalty charges to which an appeal relates is payable under regulations made under paragraph 12 of Schedule 23 to the Greater London Authority Act 1999 (c. 29) (road user charging), the adjudicator must also be a person appointed under regulations made under paragraph 28(c) of that Schedule.
- (3) Regulations under section 73(11) of the 1991 Act (provision as to procedure to be followed in relation to proceedings before parking adjudicators) may make provision with respect to proceedings before parking adjudicators when exercising the functions of adjudicators under this Schedule; and any regulations under that subsection in force at the coming into operation of Part 5 (non-payment of penalty charges) of this Act shall, with any necessary modifications, apply in relation to such proceedings.
- (4) The references to a parking adjudicator or parking adjudicators in section 73(13) to (15) and (17) and (18) of the Act of 1991 shall include references to a parking adjudicator or parking adjudicators exercising the functions of adjudicators under

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this Schedule but section 73(15) of that Act shall not apply to a penalty charge under the said Part 5 which remains payable following an adjudication under this Schedule.

- (5) Regulations under section 80 of the 2004 Act (representations and appeals) may make provision in connection with—
- (a) appeals under paragraph 3 above as they do in relation to appeals which may be made under those regulations;
 - (b) adjudicators under this Schedule as they do in relation to adjudicators appointed under section 81 of that Act,

and any regulations under the said section 80 in force at the coming into operation of the said Part 5 shall, with any necessary modifications, apply in relation to such appeals and adjudicators.