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STATUTORY INSTRUMENTS

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**2013 No. 359**

**The Civil Enforcement of Road Traffic Contraventions  
(Representations and Appeals) (Wales) Regulations 2013**

**PART 1**

**PRELIMINARY**

**Citation, commencement and application**

**1.**—(1) These Regulations may be cited as the Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (Wales) Regulations 2013 and they come into force on the day after the day on which they are made.

(2) These Regulations apply in relation to Wales.

**Interpretation**

**2.**—(1) In these Regulations—

“the 1984 Act” means the Road Traffic Regulation Act 1984<sup>(1)</sup>;

“the 2004 Act” means the Traffic Management Act 2004;

“appellant” in relation to an appeal under these Regulations or any process connected with such an appeal, means the person bringing the appeal;

“charge certificate” has the meaning given by regulation 20(1) of the General Provisions Regulations;

“the General Provisions Regulations” means the Civil Enforcement of Road Traffic Contraventions (General Provisions)(Wales) Regulations 2013<sup>(2)</sup>;

“notice of rejection” means a notice served by an enforcement authority rejecting or not accepting representations made to it under regulation 4 or 8;

“notice to owner” has the meaning given in paragraph (2);

“owner”, in relation to a vehicle, includes any person who by virtue of regulation 5 of the General Provisions Regulations, falls to be treated as the owner of the vehicle for the purposes of those Regulations<sup>(3)</sup>;

“penalty charge” means a penalty charge relating to a road traffic contravention in accordance with regulation 4 of the General Provisions Regulations;

“penalty charge notice” has the meaning given by regulation 8(1) of the General Provisions Regulations;

“procedural impropriety” has the meaning given by regulation 4(5);

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(1) 1984 c.27.

(2) S.I. 2013/362.

(3) “owner” is defined in section 92 Traffic Management Act 2004.

“recipient” has the meaning given in paragraph (2);

“register” means the register required to be kept under paragraph 21 of the Schedule; and

“road traffic contravention” means any of the following:

- (a) a parking contravention as described in paragraph 4, Part 1 of Schedule 7 to the 2004 Act;
- (b) a bus lane contravention as described in Part 2 of Schedule 7 to the 2004 Act; or
- (c) a moving traffic contravention as described in Part 4 of Schedule 7 to the 2004 Act.

(2) In these Regulations (except regulation 3)—

(a) references to a “notice to owner” are to be taken—

(i) in a case where a penalty charge notice has been served under regulation 9 of the General Provisions Regulations, as references to a notice to owner as defined by regulation 18 of those Regulations;

(ii) in a case where a penalty charge notice has been served under regulation 10 of the General Provisions Regulations, as references to that penalty charge notice; and

(b) references to “the recipient” in relation to a notice to owner are to be taken as references to the person on whom the notice to owner was served.

## PART 2

### REPRESENTATIONS AND APPEALS IN RELATION TO NOTICES TO OWNER

#### **Scope of Part 2 and duty to notify rights to make representations and to appeal**

3.—(1) Regulations 4 to 7 have effect where—

- (a) a penalty charge notice has been served by a civil enforcement officer under regulation 9 of the General Provisions Regulations, and a notice to owner has been served by the enforcement authority under regulation 18 of those Regulations; or
- (b) a penalty charge notice has been served under regulation 10 of those Regulations.

(2) A penalty charge notice served under regulation 9 of the General Provisions Regulations must, in addition to the matters required to be included in it under paragraph 1 of Schedule 1 to those Regulations, include the following information—

(a) that a person on whom a notice to owner is served is entitled to make representations to the enforcement authority against the penalty charge and may appeal to an adjudicator if those representations are rejected; and

(b) that if, before a notice to owner is served, representations against the penalty charge are received at such address as may be specified for the purpose —

(i) those representations will be considered;

(ii) but that if a notice to owner is served notwithstanding those representations, representations against the penalty charge will be considered, provided that they are made in the form and manner and within the time specified in the notice to owner.

(3) A notice to owner served under regulation 18 of the General Provisions Regulations must, in addition to the matters required to be included in it under that regulation, include the following information—

- (a) that representations on the basis specified in regulation 4 against the payment of the penalty charge may be made to the enforcement authority but that any representations made outside the period of 28 days beginning with the date on which the notice is served (“the payment period”) may be disregarded;

- (b) the nature of the representations which may be made under regulation 4;
  - (c) the address (including if appropriate any email address or FAX telephone number, as well as the postal address) to which representations must be sent and the form in which they must be made;
  - (d) that if representations which have been made—
    - (i) within the payment period; or
    - (ii) outside that period but not disregarded,are not accepted by the enforcement authority the recipient of the notice may appeal against the authority’s decision to an adjudicator; and
  - (e) in general terms, the form and manner in which an appeal may be made.
- (4) A penalty charge notice served under regulation 10 of the General Provisions Regulations must, in addition to the matters required to be included in it under paragraph 2 of Schedule 1 to those Regulations, include the following information—
- (a) that representations on the basis specified in regulation 4 may be made to the enforcement authority against the imposition of the penalty charge but that representations made outside the period of 28 days beginning with the date on which the penalty charge notice is served (“the representations period”) may be disregarded;
  - (b) the nature of the representations which may be made under regulation 4;
  - (c) the address (including if appropriate any email address or FAX telephone number, as well as the postal address) to which representations must be sent and the form in which they must be made;
  - (d) that, if representations which have been made—
    - (i) within the representations period; or
    - (ii) outside that period but not disregarded,are not accepted by the enforcement authority the recipient of the penalty charge notice may appeal against the authority’s decision to an adjudicator;
  - (e) where the penalty charge notice is served by virtue of regulation 10(1)(a) of the General Provisions Regulations(4), a statement of the effects of paragraph (5) and (6).
- (5) The recipient of a penalty charge notice served under regulation 10(1)(a) of the General Provisions Regulations may, by notice in writing to the enforcement authority, request it—
- (a) to make available at one of its offices specified by the recipient, free of charge and at a time during normal office hours so specified, for viewing by the recipient or by a representative, the record of the road traffic contravention produced by the approved device pursuant to which the penalty charge was imposed; or
  - (b) to provide the recipient, free of charge, with such still images from that record as, in the authority’s opinion, establish the road traffic contravention.
- (6) Where the recipient of the penalty charge notice makes a request under paragraph (5), the enforcement authority must comply with the request within a reasonable time.

#### **Representations against notice to owner**

4.—(1) The recipient may make representations against a notice to owner to the enforcement authority which served that notice.

(2) Any representations under this regulation must—

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(4) Regulation 10(1)(a) of the General Provisions Regulations applies to a penalty charge notice served on the basis of a record produced by an approved device.

- (a) be made in such form as may be specified by the enforcement authority;
  - (b) be to either or both of the following effects—
    - (i) that in relation to the alleged road traffic contravention on account of which the notice to owner was served, one or more of the grounds specified in paragraph (4) applies; or
    - (ii) 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 cancel the penalty charge and refund any sum paid to it on account of the penalty charge.
- (3) In determining the form for making representations the enforcement authority must act through the joint committee through which, in accordance with regulation 15 of the General Provisions Regulations, it exercises its functions relating to adjudicators.
- (4) The grounds referred to in paragraph (2)(b)(i) are—
- (a) that the alleged road traffic contravention did not occur;
  - (b) that the recipient—
    - (i) never was the owner of the vehicle in question;
    - (ii) had ceased to be its owner before the date on which the alleged road traffic contravention occurred; or
    - (iii) became its owner after that date;
  - (c) that at the time that the road traffic contravention was committed, the vehicle in question was in the control of a person who did not have the consent of the owner;
  - (d) that the recipient is a vehicle-hire firm and—
    - (i) the vehicle in question was at the material time hired from that firm under a hiring agreement; and
    - (ii) the person hiring it had signed a statement of liability acknowledging their liability in respect of any penalty charge notice served in respect of any road traffic contravention involving the vehicle during the currency of the hiring agreement;
  - (e) that the penalty charge exceeded the amount applicable in the circumstances of the case;
  - (f) that there has been a procedural impropriety on the part of the enforcement authority;
  - (g) that the order which is alleged to have been contravened in relation to the vehicle concerned, except where it is an order to which Part VI of Schedule 9 to the 1984 Act<sup>(5)</sup> applies, is invalid;
  - (h) in a case where a penalty charge notice was served by post because a civil enforcement officer was prevented by some person from fixing it to the vehicle concerned or handing it to the owner or person in charge of the vehicle, that a civil enforcement officer was not so prevented;
  - (i) that the notice to owner should not have been served because—
    - (i) the penalty charge has already been paid in full;
    - (ii) the penalty charge has been paid, reduced by the amount of any discount set in accordance with Schedule 9 to the 2004 Act, within the period specified in paragraph 1(h) of Schedule 1 to the General Provisions Regulations.
- (5) In these Regulations, “procedural impropriety” means a failure by the enforcement authority to observe any requirement imposed on it by the 2004 Act, by the General Provisions Regulations,

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(5) See Schedule 9, paragraph 34(1) of the 1984 Act as to the Orders to which Part VI of that Schedule applies; paragraph 34 of Schedule 9 was amended by the Local Government Act 1985 (c.51), Schedule 17 and by the Road Traffic Regulation (Special Events) Act 1994 (c.11), Schedule, paragraph 5(3).

or by these Regulations, in relation to the imposition or recovery of a penalty charge or other sum and includes in particular—

- (a) the taking of any step, whether or not involving the service of any document, otherwise than—
  - (i) in accordance with the conditions subject to which; or
  - (ii) at the time or during the period when, it is authorised or required by the General Provisions Regulations or these Regulations to be taken; and
- (b) in a case where an enforcement authority is seeking to recover an unpaid charge, the purported service of a charge certificate under regulation 20 of the General Provisions Regulations before the enforcement authority is authorised to serve it by those Regulations.

(6) Where the ground mentioned in paragraph (4)(b)(ii) is relied on in any representations made under this regulation, those representations must include a statement of the name and address of the person to whom the vehicle was disposed of (if that information is known).

(7) Where the ground mentioned in paragraph 4(b)(iii) is relied on in any representations made under this regulation, those representations must include a statement of the name and address of the person from whom the vehicle was acquired by the person making the representations (if that information is known).

(8) Where the ground mentioned in paragraph (4)(d) is relied on in any representations made under this regulation, those representations must include a statement of the name and address of the person to whom the vehicle was hired at the material time.

(9) In this regulation “hiring agreement” and “vehicle-hire firm” have the same meanings as in section 66 of the Road Traffic Offenders Act 1988(6)

#### **Duty of enforcement authority to which representations are made**

5.—(1) The enforcement authority may disregard any representations which it receives after the end of the period of 28 days beginning with the date of service of the relevant notice to owner.

(2) Subject to paragraph (1), where representations are made to the enforcement authority by virtue of regulation 4(1) and in accordance with regulation 4(2) it is the duty of the enforcement authority—

- (a) to consider the representations and any supporting evidence which the person making them provides; and
- (b) within the period of 56 days beginning with the date on which the representations were served on it, to serve on that person notice of its decision as to whether or not it accepts that—
  - (i) one or more of the grounds specified in regulation 4(4) applies; or
  - (ii) there are compelling reasons why, in the particular circumstances of the case, the notice to owner should be cancelled and any sum paid in respect of it should be refunded.

(3) Where the enforcement authority accepts that a ground specified in regulation 4(4) applies or that there are such compelling reasons it must—

- (a) cancel the notice to owner; and
- (b) state in the notice served under paragraph (2)(b) that the notice to owner has been cancelled and at the same time refund any sum paid in relation to the notice to owner.

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(6) 1988 c.53. Section 66 was amended by the Road Safety Act 2006, section 5, Schedule 1, paragraphs 1,8 and 9 and section 59, Schedule 7.

(4) The cancellation of a notice to owner under this regulation is not be taken to prevent the enforcement authority from serving, in accordance with the General Provisions Regulations, a fresh notice to owner on another person.

(5) If the enforcement authority fails to comply with paragraph (2)(b) within the period of 56 days there specified, it is to be deemed for the purposes of these Regulations to have accepted—

- (a) that such of the grounds referred to in paragraph (2)(b)(i) as were relied upon in the representations apply; or
  - (b) in a case where paragraph (2)(b)(ii) is relied upon, there are compelling reasons of the kind referred to in that paragraph.
- (6) Where paragraph (5) applies, the enforcement authority must—
- (a) cancel the notice to owner;
  - (b) refund any sum paid in relation to the notice to owner; and
  - (c) serve a notice on the person making the representations informing them that the notice to owner has been cancelled because the enforcement authority failed to serve notice of their decision in accordance with paragraph (2)(b).

#### **Rejection of representations against notice to owner**

6.—(1) Where representations are made under regulation 4 and the enforcement authority serves a notice of rejection under regulation 5(2)(b), that notice must—

- (a) state that a charge certificate may be served unless within the period of 28 days beginning with the date of service of the notice of rejection—
  - (i) the penalty charge is paid; or
  - (ii) the person on whom the notice is served appeals to an adjudicator against the penalty charge;
- (b) indicate the nature of an adjudicator’s power to award costs; and
- (c) describe in general terms the form and manner in which an appeal to an adjudicator must be made.

(2) A notice of rejection served in accordance with paragraph (1) may contain such other information as the enforcement authority considers appropriate.

(3) Where the notice of rejection relates to a penalty charge notice served under regulation 10 of the General Provisions Regulations that notice of rejection must state that the enforcement authority will allow the applicable discount to apply for a further 21 days beginning with the date upon which the notice of rejection is served.

(4) In paragraph (3), “applicable discount” has the same meaning as in regulation 2 of the General Provisions Regulations.

#### **Appeals to an adjudicator in relation to decisions under regulation 5**

7.—(1) Where an enforcement authority serves a notice of rejection under regulation 5(2)(b) in relation to representations made under regulation 4, the person making those representations may appeal to an adjudicator against the authority’s decision—

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

(2) On an appeal under this regulation, the adjudicator must consider the representations in question and any additional representations which are made by the appellant together with any representations made to the adjudicator by the enforcement authority.

(3) If the adjudicator concludes that a ground specified in regulation 4(4) applies, the adjudicator may give appropriate directions to the enforcement authority which may in particular include directions requiring—

- (a) the cancellation of the penalty charge notice;
- (b) the cancellation of the notice to owner; and
- (c) the refund of such sum (if any) as may have been paid to the enforcement authority in respect of the penalty charge.

(4) It is the duty of an enforcement authority to which such a direction is given to comply with it forthwith.

(5) If no direction is given under paragraph (3) but the adjudicator is satisfied that there are compelling reasons why, in the particular circumstances of the case, the notice to owner should be cancelled the adjudicator may recommend the enforcement authority to cancel the notice to owner.

(6) It is the duty of an enforcement authority to which a recommendation is made under paragraph (4) to consider afresh the cancellation of the notice to owner taking full account of any observations by the adjudicator and, within the period of thirty-five days beginning with the date on which the recommendation was given (“the 35-day period”), 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 must at the same time inform them of the reasons for its decision.

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

(9) If the enforcement authority accepts the adjudicator’s recommendation it must forthwith cancel the notice to owner and refund to the appellant any sum paid in respect of the penalty charge.

(10) If the enforcement authority fails to comply with the requirements of paragraph (6) within the 35-day period, the authority is to be taken to have accepted the adjudicator’s recommendation and must cancel the notice to owner and refund to the appellant any sum paid in respect of the penalty charge immediately after the end of that period.

## PART 3

### REPRESENTATIONS AND APPEALS IN RELATION TO THE IMMOBILISATION OF VEHICLES

#### **Right to make representations**

**8.—**(1) This regulation applies to the owner or person in charge of a vehicle where—

- (a) in accordance with regulation 12 of the General Provisions Regulations an immobilisation device has been fixed to a vehicle found in a civil enforcement area; and
- (b) the owner or person in charge of the vehicle secures the release of the vehicle from the device on payment of an amount in accordance with regulation 14 of those Regulations.

(2) A person to whom paragraph (1) applies must immediately upon the release of the vehicle be informed—

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

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

- (3) The enforcement authority must 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 refund some or all of the amount paid to secure the release of the vehicle,
- and any such representations must be in such form as may be specified by the enforcement authority.
- (5) The grounds are—
- (a) that the circumstances in which the vehicle had been permitted to remain at rest in a civil enforcement area were not circumstances in which a penalty charge was payable under regulation 4 of the General Provisions Regulations;
  - (b) 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;
  - (c) that the place where the vehicle was at rest was not in a civil enforcement area;
  - (d) that, in accordance with regulation 13 of the General Provisions Regulations (limitations on the power to immobilise vehicles), there was in the circumstances of the case no power under those Regulations to immobilise the vehicle at the time at which it was immobilised or at all;
  - (e) 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
  - (f) that there has been a procedural impropriety on the part of the enforcement authority.
- (6) In determining the form for making representations an enforcement authority must act through the joint committee through which, in accordance with regulation 15 of the General Provisions Regulations, it exercises its function relating to adjudicators.

### **Duty of enforcement authority to which representations are made**

9.—(1) The enforcement authority may disregard any representations 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 8(2) of their right to make representations.

(2) Subject to paragraph (1) it is the duty of the enforcement authority, where representations are made to it in accordance with regulation 8(4), within 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 8(5) applies; or
  - (ii) 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 should be refunded.

(3) Where an authority serves notice under paragraph (2)(b)(i) that it accepts that such a ground applies, it must (when serving that notice) refund any sums that the person to whom the vehicle was released was required to pay under regulation 14 of the General Provisions Regulations, except to the extent (if any) to which those sums were properly paid.

(4) Where an authority serves no notice under paragraph (2)(b)(i), but does serve a notice under paragraph (2)(b)(ii) that it accepts that there are such compelling reasons, it must refund the sums referred to in paragraph (3) or such of them as it considers appropriate.



- (5) Where an authority serves notice under paragraph (2)(b), that notice must—
  - (a) inform the person on whom it is served of the right to appeal to an adjudicator under regulation 10;
  - (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.
- (6) Where an authority fails to comply with paragraph (2) within the period of 56 days mentioned there—
  - (a) it is to be deemed to have accepted the representations and to have served notice to that effect under paragraph (2)(b); and
  - (b) must immediately after the end of that period refund all such sums as are mentioned in paragraph (3).

### **Appeals to an adjudicator in relation to decisions under regulation 9**

**10.**—(1) Where an enforcement authority serves a notice of rejection under regulation 9(2)(b) in relation to representations made under regulation 8(4), the person making those representations may appeal to an adjudicator against the authority’s decision—

- (a) within the period of 28 days beginning with the date of service of that notice; or
  - (b) within such longer period as an adjudicator may allow.
- (2) On an appeal under this regulation, the adjudicator must consider the representations in question and any additional representations which are made by the appellant together with any representations made to the adjudicator by the enforcement authority.
- (3) If the adjudicator concludes—
- (a) that any of the grounds referred to in regulation 8(5) apply; and
  - (b) that the enforcement authority would have been under the duty imposed by regulation 9(3) to refund any sum if it had served notice that it accepted that the ground in question applied,
- the adjudicator must direct that authority to make the necessary refund.
- (4) It is the duty of an enforcement authority to which a direction is given under paragraph (3) to comply with it forthwith.
- (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 should be refunded, the adjudicator may recommend the enforcement authority to make such a refund.
- (6) It is 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 of thirty-five days (“the 35-day period”) 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 must at the same time inform them of the reasons for its decision.
- (8) No appeal to the adjudicator lies against the decision of the enforcement authority under paragraph (7).
- (9) If the enforcement authority accepts the adjudicator’s recommendation it must 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 is to be taken to have accepted the adjudicator's recommendation and must make the recommended refund immediately after the end of that period.

## PART 4

### OFFENCES AND PROCEDURE

#### False representations

**11.**—(1) A person who makes any representation under Part 2 or 3 of these Regulations or under the Schedule so far as it relates to an appeal under Part 2 or 3, which is false in a material particular, and does so recklessly or knowing it to be false, is guilty of an offence.

(2) A person convicted of an offence under paragraph (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

#### Procedure to be followed by adjudicators, service of documents and recovery of sums payable

**12.**—(1) The Schedule to these Regulations has effect as to the procedure and service of documents in adjudication proceedings and the register.

(2) Subject to the provisions of that Schedule, an adjudicator may regulate their own procedure.

(3) Any amount which is payable—

(a) under an adjudicator's adjudication;

(b) by virtue of any other provision of these Regulations which requires an enforcement authority to refund any sum,

is, if a county court so orders, to be recoverable by the person to whom the amount is payable as if it were payable under a county court order.

#### Revocation

**13.** The Civil Enforcement of Parking Contraventions (Representations and Appeals) (Wales) Regulations 2008(7) are hereby revoked.

26th February 2013

*C Grayling*  
Lord Chancellor  
Ministry of Justice