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STATUTORY INSTRUMENTS

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**2018 No. 574**

**The Silvertown Tunnel Order 2018**

**PART 4**

**OPERATIONAL PROVISIONS**

**Removal of motor vehicles**

**44.**—(1) If any obstruction is caused by a motor vehicle waiting, loading, unloading or breaking down in the tunnels areas, the person in charge of the motor vehicle must immediately remove it; and if that person fails to do so an authorised person may take all reasonable steps to remove the obstruction.

(2) An authorised person who removes a motor vehicle under paragraph (1) may do so by towing or driving the motor vehicle or in such other manner as the authorised person may think necessary and may take such measures in relation to the motor vehicle as the authorised person considers necessary to enable the motor vehicle to be removed.

(3) Where an authorised person requires a person to remove a motor vehicle which is causing an obstruction in the circumstances described under paragraph (1) and the authorised person determines that the manner of removal proposed by the person required to remove it may cause danger to other persons using the road, the authorised person may require the motor vehicle to be moved in such other manner as the authorised person considers safe or may remove or arrange for the removal of the motor vehicle if the person required to remove it refuses to remove it in the manner so required.

(4) A motor vehicle removed by an authorised person under this article—

- (a) may be returned immediately to the person in charge of that motor vehicle; or
- (b) where immediate return of that motor vehicle to the person in charge of it is not practicable or appropriate, must be delivered to TfL or to a person authorised by TfL to keep motor vehicles so removed (“the custodian” in either case).

(5) In a case where the owner of the motor vehicle has disclaimed all rights of ownership of the motor vehicle and its contents, the custodian may dispose of them in such manner as it sees fit at any time.

(6) In any case not falling within paragraph (5), a motor vehicle or its contents must not be disposed of before the end of the period of five weeks beginning with the date on which the motor vehicle was removed and until the custodian has, for the purpose of ascertaining the owner of the motor vehicle, taken such steps as are specified in paragraph (7) and either—

- (a) the custodian has failed to ascertain the name and address of the owner; or
- (b) the owner has failed to comply with a notice complying with paragraph (8) served on the owner by post.

(7) The steps referred to in paragraph (6) are—

- (a) if the motor vehicle carries a United Kingdom registration mark, the custodian must ascertain from the records kept by the Secretary of State under the Vehicle Excise and

Registration Act 1994(1) the name and address of the person by whom the motor vehicle is kept; and

- (b) if the motor vehicle does not carry such a registration mark, the custodian must make such inquiries as appear to the custodian reasonably practicable to ascertain the owner of the motor vehicle.

(8) A notice under paragraph (6)(b) must be addressed to the owner which—

(a) states—

- (i) reasons for the removal of the motor vehicle;
- (ii) the place to which the motor vehicle has been removed;
- (iii) the registration mark and make of the motor vehicle;
- (iv) the steps to be taken to obtain possession of the motor vehicle;
- (v) the outstanding penalty charges payable in respect of the motor vehicle; and
- (vi) that unless the motor vehicle is removed by the owner on or before the date specified in sub-paragraph (b), the custodian intends to dispose of it; and

- (b) requires the owner to remove the motor vehicle from the custody of the custodian within 21 days of the date on which the notice was served.

(9) The custodian is entitled to treat the registered keeper of the motor vehicle as the person entitled to its contents unless and to the extent that some other person satisfies the custodian of their claim to all or part of them.

(10) Where it appears to the custodian that more than one person is the owner of the motor vehicle—

- (a) the notice under paragraph (6)(b) must be sent to all persons appearing to be the owner of the motor vehicle; and
- (b) the motor vehicle may not be disposed of in accordance with paragraph (5) unless all persons appearing to be the owners have disclaimed all rights of ownership.

(11) Where a motor vehicle has been removed and delivered into the custody of a custodian in accordance with paragraph (4), the custodian may (whether or not any claim is made under this article) recover from the person who was the owner of the motor vehicle when the motor vehicle was removed the charges applied by paragraph (16) for—

- (a) its removal and storage; and
- (b) if the motor vehicle has been disposed of, its disposal.

(12) Where, by virtue of paragraph (11)(a), any sum is recoverable in respect of a motor vehicle by a custodian, the custodian is entitled to retain custody of it until that sum is paid.

(13) Where—

- (a) it appears to the custodian that more than one person is the owner of the motor vehicle; and
- (b) one of those owners, or a person authorised by one of those owners, has gained possession of the motor vehicle under paragraph (19),

then the owner who gained possession of the motor vehicle under paragraph (19) must be treated as the owner from whom the sum is recoverable.

(14) Where—

- (a) it appears to the custodian that more than one person is the owner; and
- (b) one of those owners has made a claim under paragraph (23) that satisfies the conditions in paragraph (24),

then the owner who made the claim under paragraph (23) must be treated as the owner from whom the sum is recoverable.

(15) Where—

- (a) it appears to the custodian that more than one person is the owner of the motor vehicle; and
- (b) neither paragraph (13) nor paragraph (14) applies,

then those persons must be treated as jointly and severally liable for the prescribed charges.

(16) Penalty charges in respect of the removal, storage and disposal of vehicles imposed by a statement of charges published under article 54(5) (power to charge for use of the tunnels) apply to the removal, storage and disposal of motor vehicles under this article.

(17) A person (“the claimant”) may take possession of a motor vehicle (with its contents) which has been removed and delivered to a custodian and has not been disposed of under this article, if the conditions specified in paragraph (18) are satisfied.

(18) The conditions are that—

- (a) the claimant satisfies the custodian that the claimant is the owner of the motor vehicle or that the claimant is authorised by the owner to take possession of the motor vehicle; and
- (b) all outstanding penalty charges applied by paragraph (16) are paid to TfL.

(19) On giving the claimant possession of a motor vehicle pursuant to this article, the custodian must give the claimant a statement of the right of the owner (or the person in charge of the motor vehicle when the motor vehicle was removed) to appeal, of the steps to be taken in order to appeal and of the address to which representations should be sent.

(20) Where it appears to the custodian that more than one person is the owner of the motor vehicle, or person authorised by the owner, the custodian must give possession of the motor vehicle to the first claimant who satisfied the conditions set out in paragraph (18).

(21) Schedule 8 (removal of motor vehicles and recovery of penalty charges) has effect in relation to appeals against the imposition of penalty charges and the service of penalty charge notices.

(22) An adjudicator appointed by the Lord Chancellor under regulation 3 of the Road User Charging (Enforcement and Adjudication) (London) Regulations 2001(2) is an adjudicator for the purposes of hearing appeals under Schedule 8.

(23) If, after a motor vehicle has been disposed of by a custodian pursuant to this article, a person claims to have been the owner of the motor vehicle at the time when it was disposed of and the conditions specified in paragraph (24) are fulfilled, a sum calculated in accordance with paragraph (25) is payable by the custodian to the owner.

(24) The conditions are that—

- (a) the person claiming satisfies the custodian that the person so claiming was the owner of the motor vehicle at the time it was disposed of;
- (b) the claim is made before the end of the period of one year beginning with the date on which the motor vehicle was disposed of; and
- (c) no previous claim in respect of the motor vehicle has been made.

(25) The sum payable under paragraph (23) is calculated by deducting from the proceeds of sale the sums that would have been payable under paragraph (18)(b) had the motor vehicle been claimed by the owner immediately before its disposal together with such penalty charge as may be imposed in respect of the disposal of a motor vehicle.

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(2) S.I. 2001/2313, as amended by S.I. 2003/108, S.I. 2008/1956 and S.I. 2008/2683.

(26) Where it appears to the custodian of a motor vehicle that more than one person is the owner, the custodian must treat the first person who makes a claim that satisfies the conditions set out in paragraph (24) as the owner for the purposes of this article.

(27) For the purposes of this article the owner of a motor vehicle is taken to be the person by whom the motor vehicle is kept; and in determining for those purposes who was the owner of the motor vehicle at any time, it is presumed (unless the contrary appears) that the owner was the person in whose name the motor vehicle was at that time registered under the Vehicle Excise and Registration Act 1994(3).

(28) For the purposes of this article “breaking down” includes by way of a mechanical defect, lack of fuel, oil, water or power required for the motor vehicle or any other circumstances in which a person in charge of the motor vehicle could not immediately, safely and without damage to the motor vehicle or its accessories drive it under its own power away from the tunnels areas.

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(3) 1994 c. 22.