

SCHEDULES

SCHEDULE 8

REMOVAL OF MOTOR VEHICLES AND RECOVERY OF PENALTY CHARGES

PART 3

RECOVERY OF PENALTY CHARGES

Penalty charge notices

5.—(1) Where a charge with respect to a motor vehicle under the statement of charges has not been paid by the time by which it is required by the statement of charges to be paid and, in those circumstances, the statement of charges provides for the payment of a penalty charge, TfL may serve a notice (“a penalty charge notice”).

(2) A penalty charge notice must be served on the registered keeper of the motor vehicle.

(3) A penalty charge notice must state—

- (a) the amount of the penalty charge to which it relates;
- (b) the grounds on which TfL believes that the penalty charge is payable with respect to the motor vehicle;
- (c) the time, in accordance with the statement of charges under which it is imposed, and the manner in which the penalty charge must be paid;
- (d) the amount of the reduced penalty charge if it is duly paid in the time specified in the statement of charges;
- (e) the amount of the increased penalty charge if—
 - (i) the penalty charge is not paid; or
 - (ii) no representations are made under paragraph 6, before the end of the relevant period as defined by paragraph 10(3)(a);
- (f) the address to which payment of the penalty charge must be sent;
- (g) that the person on whom the notice is served (“the recipient”) may be entitled to make representations under paragraph 10; and
- (h) the effect of paragraph 9.

Representations against penalty charge notice

6.—(1) Where it appears to the recipient that one or other of the grounds mentioned in subparagraph (3) are satisfied, the recipient may make representations in writing to that effect to TfL.

(2) TfL may disregard any such representations which are received by it after the end of the period of 28 days beginning with the date on which the penalty charge notice was served.

(3) The grounds are—

- (a) that the recipient—

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- (i) never was the registered keeper in relation to the motor vehicle in question;
 - (ii) had ceased to be the person liable before the date on which the motor vehicle was used in the tunnels; or
 - (iii) became the person liable after that date;
- (b) that the charge payable for the use or keeping of the motor vehicle on a road on the occasion in question was paid at the time and in the manner required by the statement of charges;
 - (c) that no penalty charge is payable under the statement of charges;
 - (d) that the motor vehicle had been used or kept, or permitted to be used or kept, on a road by a person who was in control of the motor vehicle without the consent of the registered keeper;
 - (e) that the penalty charge exceeded the amount applicable in the circumstances of the case;
 - (f) that the recipient is a vehicle-hire firm and—
 - (i) the motor 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 liability in respect of any penalty charge notice imposed in relation to the motor vehicle during the currency of the hiring agreement.
- (4) Where the ground mentioned in sub-paragraph (3)(a)(ii) is relied on in any representations made under this paragraph, those representations must include a statement of the name and address of the person to whom the motor vehicle was disposed of by the person making the representations (if that information is in that person's possession).
- (5) Where the ground mentioned in sub-paragraph (3)(a)(iii) is relied on in any representations made under this paragraph, those representations must include a statement of the name and address of the person from whom the motor vehicle was acquired by the person making the representations (if that information is in that person's possession).
- (6) Where representations are duly made under this paragraph to TfL it must—
- (a) consider them and any supporting evidence which the person making them provides; and
 - (b) serve on that person notice of its decision as to whether or not it accepts that the ground in question has been established.

Cancellation of penalty charge notice

- 7.—(1) Where representations are made under paragraph 6 and TfL accepts that the ground in question has been established it must—
- (a) cancel the penalty charge notice; and
 - (b) state in the notice served under paragraph 6(6) that the penalty charge notice has been cancelled.
- (2) The cancellation of a penalty charge notice under this paragraph is not to be taken to prevent TfL concerned from serving a fresh penalty charge notice on the same or another person.

Rejection of representations against penalty charge notice

- 8.—(1) Where any representations are made under paragraph 6 but TfL does not accept that a ground has been established, the notice served under paragraph 6(6) (“the notice of rejection”) must—
- (a) state that a charge certificate may be served under paragraph 10 unless before the end of 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 against any person appealing to the adjudicator; 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 may contain such other information as TfL considers appropriate.

Adjudication by an adjudicator

9.—(1) Where TfL serves notice under paragraph 6(6) that it does not accept that a ground on which representations were made under that paragraph has been established, the person making those representations may appeal to an adjudicator against TfL’s decision before—

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

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

(3) On an appeal under this paragraph, the adjudicator must consider the representations in question and any additional representations which are made by the appellant on any of the grounds mentioned in paragraph 6(3) and may give TfL such directions as the adjudicator considers appropriate.

- (4) TfL must comply with a direction of the adjudicator given under sub-paragraph (3).

Charge certificates

10.—(1) Where a penalty charge notice is served on any person and the penalty charge to which it relates is not paid before the end of the relevant period, TfL may serve on that person a statement (a “charge certificate”) to the effect that the penalty charge in question is increased to the sum specified in the statement of charges under which it was incurred.

(2) Where TfL has served a charge certificate on any person it may cancel the charge certificate and serve or cancel such further charge certificates as it thinks fit.

(3) The relevant period, in relation to a penalty charge notice, is the period of 28 days beginning—

- (a) where no representations are made under paragraph 6, with the date on which the penalty charge notice is served;

(b) where—

- (i) such representations are made;
 - (ii) a notice of rejection is served by TfL; and
 - (iii) no appeal against the notice of rejection is made,
- with the date on which the notice of rejection is served; or

(c) where there has been an unsuccessful appeal against a notice of rejection, with the date on which notice of the adjudicator’s decision is served on the appellant.

(4) Where an appeal against a notice of rejection is made but is withdrawn before the adjudicator gives notice of the adjudicator’s decision, the relevant period in relation to a penalty charge notice is the period of 14 days beginning with the date on which the appeal is withdrawn.

Enforcement of charge certificate

11. Where a charge certificate has been served on any person and the increased penalty charge provided for in the certificate is not paid before the end of the period of 14 days beginning with the date on which the certificate is served, TfL may, if a county court so orders, recover the increased charge as if it were payable under a county court order.

Invalid notices

12.—(1) This paragraph applies where—

- (a) a county court makes an order under paragraph 11;
- (b) the person against whom it is made makes a statutory declaration complying with sub-paragraph (2); and
- (c) that declaration is, before the end of the period of 21 days beginning with the date on which notice of the county court's order is served on that person, served on the county court which made the order.

(2) The statutory declaration must state that the person making it—

- (a) did not receive the penalty charge notice in question;
- (b) made representations to TfL under paragraph 6 but did not receive a notice of rejection; or
- (c) appealed to an adjudicator under paragraph 9 against the rejection by TfL of representations made by that person under paragraph 6 but had no response to the appeal.

(3) Sub-paragraph (4) applies where it appears to a county court, on the application of a person on whom a charge certificate has been served, that it would be unreasonable in the circumstances of that person's case to insist on that person serving a statutory declaration within the period of 21 days allowed for by sub-paragraph (1).

(4) Where this sub-paragraph applies, the county court may allow such longer period for service of the statutory declaration as the county court considers appropriate.

(5) Where a statutory declaration is served under sub-paragraph (1)(c)—

- (a) the order of the court is deemed to have been revoked;
- (b) the charge certificate is deemed to have been cancelled;
- (c) in the case of a declaration under sub-paragraph (2)(a), the penalty charge notice to which the charge certificate relates is deemed to have been cancelled; and
- (d) the district judge must serve written notice of the effect of service of the declaration on the person making it and on TfL.

(6) Service of a declaration under sub-paragraph (2)(a) must not be taken to prevent TfL from serving a fresh penalty charge notice on the same or another person.

(7) Where a declaration has been served under sub-paragraph (2)(b) or (c), TfL must refer the case to the adjudicator who may give such directions as the adjudicator considers appropriate.

Enforcement by execution

13.—(1) Subject to sub-paragraph (2)—

- (a) an unpaid penalty charge which is recoverable in accordance with paragraph 11 as if it were payable under a county court order; and
- (b) a sum to be paid by a person (other than TfL) under an adjudication of an adjudicator which is recoverable in accordance with paragraph 14 as if it were payable under a county court order,

is to be treated for purposes of enforcement by execution as if it was a specified debt in the Enforcement of Road Traffic Debts Order 1993 (“the 1993 Order”)(1).

(2) For the purposes of the enforcement of an unpaid penalty charge referred to in sub-paragraph (1)(a) or the enforcement of the payment of a sum referred to in sub-paragraph (1)(b)—

(a) any reference in the 1993 Order to “the authority” is to be treated as a reference to TfL; and

(b) the reference in article 3(1) of the 1993 Order to “the time for serving a statutory declaration” is to be treated as a reference to, as the case may be—

(i) the period of 21 days allowed by paragraph 12(1)(c); or

(ii) where a longer period has been allowed pursuant to paragraph 12(4), that period.

14. Any amount which is payable under an adjudication must, if a county court so rules, be recoverable by the person to whom the amount is payable, as if it were payable under a county court order.

Service by post

15. Any penalty charge notice, charge certificate or other notice under this Schedule may be served by post (or in such other form as is agreed between the person to be served and TfL) and, where the person on whom it is to be served is a body corporate, is duly served if it is sent by post to the secretary or clerk of that body.

Procedure

16. The procedure to be applied to proceedings under this Schedule is that which applies to adjudication proceedings in relation to road user charging under the Road User Charging (Enforcement and Adjudication) (London) Regulations 2001(2) as amended from time to time.

(1) S.I. 1993/2073.

(2) S.I. 2001/2313.