

TRAFFIC MANAGEMENT (NORTHERN IRELAND) ORDER 2005

S.I. 2005 No. 1964 (N.I. 14)

EXPLANATORY MEMORANDUM

COMMENTARY ON PROVISIONS

11. Comments are not given where the wording is self-explanatory.

Article 3: Traffic attendants

This Article provides that traffic attendants may be employed by the Department, or by a third party, to enforce road traffic contraventions and specifies the functions that traffic attendants may carry out only when wearing the uniform determined by the Department.

Article 4: Penalty charges

This Article provides that a penalty charge is payable with respect to a vehicle involved in a road traffic contravention specified in Schedule 1. The specified contraventions continue to be offences and, therefore, the effect of this Article is to make the contraventions dually enforceable under both criminal and civil law.

Paragraph (6) ensures that criminal proceedings or the issue of a fixed penalty notice take precedence over civil proceedings or the issue of a penalty charge notice.

Paragraph (7) prevents the issue of a fixed penalty notice or criminal proceedings in relation to contraventions which are prescribed under that paragraph. The Department intends to prescribe most of the contraventions in Schedule 1. This will effectively 'decriminalise' them; it is intended that only contraventions relating to pedestrian crossings and compliance with certain traffic signs will remain dually enforceable.

Article 5: Issue of Penalty Charge Notice by traffic attendant or Department

Article 5 describes how a penalty charge notice (PCN) may be issued and provides that, where a traffic attendant is prevented from fixing the PCN to the vehicle or from giving the PCN to the person in charge of the vehicle, the Department may issue the PCN.

Article 6: Service of Notice to Owner if penalty charge not paid

Article 6 provides that where a PCN has not been paid within 28 days, the Department may serve a Notice to Owner (NtO) on the owner, who is presumed to be the registered keeper of the vehicle. The purpose of the NtO is to allow the Department to pursue the payment of the penalty charge and to inform the owner of future action to be taken by the Department and of his right to challenge the NtO by making representations to the Department.

Articles 7-8: Issue of PCN on basis of record produced by prescribed device

These Articles enable the Department to use technology to enforce the road traffic contraventions specified in Schedule 1. The devices to be used for this purpose must be prescribed by the Department. Evidence produced by the prescribed devices may be used in civil or criminal proceedings and must be certified by a person approved by the Department.

A PCN issued under Article 7 will always be sent directly to the owner of the vehicle and will, therefore, contain particulars normally included in a NtO.

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Articles 9-13: Representations and appeals

Articles 9-13 enable the owner to challenge a NtO by making representations to the Department and, if the Department rejects those representations, by appealing to an independent adjudicator.

Articles 14-15: Charge Certificates

If a penalty charge is not paid within the relevant period, the Department will issue a Charge Certificate to the owner which will increase the penalty charge by a specified percentage and give him 14 days to pay. If the owner does not pay the increased penalty within 14 days, the outstanding charge is deemed to be a money judgment due to the Department and enforceable by using the Judgments Enforcement (Northern Ireland) Order 1981. This allows the Department to enforce the debt through the Enforcement of Judgments Office.

Article 16: Appeal by way of statutory declaration to an adjudicator

Where a person is liable to pay an amount under Article 15, he may appeal by way of a statutory declaration to an adjudicator on one of the three grounds listed in this Article. The adjudicator has the power to direct the Department as he sees fit, or to take other appropriate action.

Article 17: Procedure on cancellation of penalty charge etc.

This Article allows the Department to cancel a PCN, NtO or charge certificate at any time and to re-issue a fresh notice or certificate.

Article 18: Immobilisation of vehicles

This Article sets out the circumstances in which the Department may immobilise a vehicle. This can be where a PCN is payable, or where there is an amount of debt from unpaid charges owed to the Department. Certain conditions must be satisfied before the vehicle can be immobilised because of an amount of debt owed to the Department. These conditions must be prescribed by the Department in regulations and could include, for example, that a specified number, or level, of outstanding debts would have to be reached before powers to immobilise could be employed.

Article 19: Exemptions from Article 18

A vehicle displaying a current disabled person's badge is exempt from immobilisation. Where a PCN is issued because of a failure to pay a parking charge, or display the relevant parking ticket or device; or because the vehicle has overstayed the parking period paid for, then an immobilisation device cannot be fixed to the vehicle until 15 minutes after the issue of the PCN.

Article 20: Release of immobilised vehicle

This Article sets out procedures to be followed and charges to be paid to secure a vehicle's release from an immobilisation device.

Articles 21-22: Removal of vehicles by the Department

The Department has the power to remove a vehicle and its contents either where a PCN is payable, or where there is an amount of outstanding debt from unpaid charges. In the former circumstances, the Department intends using this power to remove vehicles for reasons of road safety or traffic management. In the latter, prescribed conditions, which are likely to be the same as those proposed under Article 18, will have to be satisfied. Where a PCN is issued because of a failure to pay a parking charge, or to display the relevant parking ticket or device; or because the vehicle has overstayed the parking period paid for, the Department cannot remove the vehicle until 15 minutes after the issue of the PCN.

Article 23: Disposal or recovery of vehicles removed under Article 21

This Article provides the Department with the power to dispose of a vehicle and its contents, and sets out the procedures to be followed before a vehicle can be removed from the custody of the Department.

Article 24: Application of Articles 18 to 23 in relation to amounts recoverable under Article 15

This Article provides the Department with the power to add to, or amend, the provisions of Articles 18 – 23 in relation to the amount that it may recover as a civil debt.

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Articles 25-28: Representations and appeals

An individual who secures the release of a vehicle from an immobilisation device, or from the custody of the Department, has the right to make representations to the Department. Articles 25-28 enable the owner and the person who has paid the relevant charges to release a vehicle (if not the owner) to make such representations and, if the Department rejects his representations, appeal to an independent adjudicator.

Articles 29- 31: Provisions relating to adjudicators

These Articles set out the procedures and criteria for appointing adjudicators; matters relating to tenure of office; procedures for resignation, reappointment or removal from office; and enabling powers to regulate proceedings before adjudicators. The Department is required to fund the cost of the adjudication service, which will be provided by the Northern Ireland Court Service.

Article 32: Disabled persons' badges

This Article changes references to "institution" in section 14 of the Chronically Sick and Disabled Persons (NI) Act 1978 to the more appropriate term "organisation" and introduces powers for traffic attendants to inspect Disabled Persons' Badges.

Paragraph (4) creates an offence of failing without reasonable excuse to produce a badge when required to do so by a constable or a traffic attendant. On conviction the offence is punishable by a fine not exceeding level 3 on the standard scale (currently £1,000).

Articles 33-34: Recognition of badges issued outside Northern Ireland and wrongful use of badges

Article 33 formalises existing (non-statutory) reciprocal recognition of disabled persons' badges issued elsewhere in the United Kingdom, other EU Member States and certain other countries, and extends such recognition to badges issued in other countries. Holders of disabled persons' badges ("recognised badges") issued in other countries are afforded the same concessions as holders of badges issued in Northern Ireland and are subject to the same enforcement provisions. The Chronically Sick and Disabled Persons (NI) Act 1978 is amended so that provisions on the wrongful use of disabled persons' badges apply equally to recognised badges.

Articles 36 and 37: Maps and use of maps in certain orders

The Department is permitted to prepare maps as a means of recording the effect of traffic regulation orders, parking place orders and extinguishment orders; and a map may specify the road or area to which the provisions of such orders will apply. The order will have effect as if the map were part of the order.

Article 38: Acquisition of land

This Article amends the Department's power to acquire land under Article 110 of the Roads (Northern Ireland) Order 1993 to allow the Department to acquire land for the purposes of this Order.

Article 39: Parking charges

This Article amends the 1997 Order to remove references to excess, initial and alternative charges. These charges are no longer appropriate, as a penalty charge will be payable in relation to a contravention in a parking place.

Article 40: Disposal of abandoned vehicles under the 1997 Order

This Article amends Article 52 of the 1997 Order to extend the Department's power to dispose of a vehicle which is in such a condition that it ought to be destroyed to include situations where a vehicle has initially been removed using provisions of this Order.

Article 41: Procedure for making traffic regulation orders, etc.

This Article amends Schedule 1 to the 1997 Order to allow the Department, when publishing a notice in relation to a proposed traffic regulation order, to use a more general description (i.e. the area as opposed to the specific road) of where the prohibition or restriction is to apply. The amendment also brings the wording of the Schedule into line with the wording used in the main

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body of the Order i.e. Article 4(3)(c). Schedule 2 makes similar amendments to Schedules 2-6 of the 1997 Order.

Article 42: Relationship between traffic regulation orders and earlier provisions

This Article makes it clear that the powers that the Department has under Article 4 of the 1997 Order include powers which it had under Articles 21 or 22 of the Road Traffic (Northern Ireland) Order 1981. This Article also removes the requirement for the Department to consult on orders which it makes under Article 4 of the 1997 Order which revoke or reproduce provisions made under Article 21 or 22 of the Road Traffic (Northern Ireland) Order 1981.

Article 43: Power to make consequential amendments of traffic regulation orders, etc.

This Article provides the Department with the power to make amendments to or revoke traffic regulation orders and orders relating to parking places where necessary as a result of the introduction of this Order.

Article 44: False representations

This Article makes it an offence liable to a fine not exceeding level 5 on the standard scale (currently £5,000) to make false representations knowingly or recklessly.

Article 45: Service of Documents

This Article modifies the provisions of the Interpretation Act (Northern Ireland) 1954 relating to the service of documents. Ordinary post can be used instead of registered post for the service of documents under this Order.