STATUTORY INSTRUMENTS

# 2005 No. 1964

# The Traffic Management (Northern Ireland) Order 2005

*Immobilisation and removal of vehicles*

**Immobilisation of vehicles**

**18.**—(1) The **[**[F1]enforcement authority**]** may fix an immobilisation device to a stationary vehicle [F2]... if—

(a) a traffic attendant has fixed a penalty charge notice to the vehicle; or

(b) an amount is recoverable **[**[F3]by the enforcement authority**]** from the owner of the vehicle under Article 15 and prescribed conditions are satisfied.

**[**[F4](1A) The power of an enforcement authority under paragraph (1) isexercisable only—

(a) in the case of a district council, in relation to a vehicle in an off-street parking place in the district of the council (other than one operated as a "park and ride" or "park and share" parking place);

(b) in the case of the Department, in relation to a vehicle on a public road or in an off-street parking place operated as a "park and ride" or "park and share" parking place.**]**

(2) The **[**[F1]enforcement authority**]** shall also fix to the vehicle a notice—

(a) indicating that an immobilisation device has been fixed to the vehicle and warning that no attempt should be made to drive the vehicle or otherwise put it in motion unless it has been released from the device;

(b) specifying the steps to be taken in order to secure its release; and

(c) giving such other information as the **[**[F1]enforcement authority**]** may determine.

(3) A notice fixed to a vehicle in accordance with this Article shall not be removed or interfered with except by or under the authority of—

(a) the owner, or person in charge, of the vehicle; or

(b) the **[**[F1]enforcement authority**]** .

(4) A person contravening paragraph (3) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(5) The power conferred by paragraph (1) includes power to move the vehicle to another place and fix an immobilisation device to the vehicle in that other place.

(6) It shall be the duty of the Department to prescribe conditions for the purposes of paragraph (1)(b).

**F1** Words in arts. 5-28 (except arts. 8(3)(4), 18(6), 21(8), 24(1)) substituted (1.4.2015) by Off-street Parking (Functions of District Councils) Act (Northern Ireland) 2015 (c. 3), art. 1(8), **Sch. para. 8**

**F2** Words in art. 18(1) omitted (1.4.2015) by virtue of Off-street Parking (Functions of District Councils) Act (Northern Ireland) 2015 (c. 3), art. 1(8), **Sch. para. 9(2)(a)**

**F3** Words in art. 18(1)(b) inserted (1.4.2015) by Off-street Parking (Functions of District Councils) Act (Northern Ireland) 2015 (c. 3), art. 1(8), **Sch. para. 9(2)(b)**

**F4** Art. 18(1A) inserted (1.4.2015) by Off-street Parking (Functions of District Councils) Act (Northern Ireland) 2015 (c. 3), art. 1(8), **Sch. para. 9(3)**

**Modifications etc. (not altering text)**

**C1** Arts. 3-28: transfer of functions (1.4.2015) by Off-street Parking (Functions of District Councils) Act (Northern Ireland) 2015 (c. 3), **arts. 1(3)**(8) (with art. 1(5))

**Commencement Information**

**I1** Art. 18 wholly in force at 30.10.2006; art. 18(1)(b)(6) in force at 20.8.2005 see art. 1(2); art. 18(1)(a)(2)-(5) in force at 30.10.2006 by S.R. 2006/347, **art. 2**, Sch.

### Exemptions from Article 18

**19.**—(1) An immobilisation device shall not be fixed to a vehicle under Article 18 if a current disabled person's badge is displayed on the vehicle.

(2) Where under Article 5(1)(a) a traffic attendant fixes a penalty charge notice to a vehicle in a parking place in respect of a contravention which consists of, or arises out of, a failure to—

(a) pay a parking charge;

(b) display a ticket or parking device properly; or

(c) remove the vehicle from the parking place by the end of a period for which the appropriate charge was paid,

the **[**[F5]enforcement authority**]** shall not fix an immobilisation device to the vehicle under Article 18(1)(a) until 15 minutes have elapsed from the time when the traffic attendant fixes the penalty charge notice to the vehicle.

(3) If, in a case in which an immobilisation device would have been fixed to a vehicle but for paragraph (1), the vehicle was not being used—

(a) in accordance with regulations under section 14 or 14A of the Chronically Sick and Disabled Persons (Northern Ireland) Act 1978 (c. 53); and

(b) in circumstances falling within section 14B(1)(b) or (2)(b) of that Act (disabled person's concession),

the person in charge of the vehicle shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**F5** Words in arts. 5-28 (except arts. 8(3)(4), 18(6), 21(8), 24(1)) substituted (1.4.2015) by Off-street Parking (Functions of District Councils) Act (Northern Ireland) 2015 (c. 3), art. 1(8), **Sch. para. 8**

**Modifications etc. (not altering text)**

**C1** Arts. 3-28: transfer of functions (1.4.2015) by Off-street Parking (Functions of District Councils) Act (Northern Ireland) 2015 (c. 3), **arts. 1(3)**(8) (with art. 1(5))

### Release of immobilised vehicle

**20.**—(1) Subject to paragraph (3), a vehicle to which an immobilisation device has been fixed in accordance with this Order shall be released from that device on payment of the relevant charges.

(2) In paragraph (1) "relevant charges" means—

(a) the penalty charge payable if a penalty charge notice was fixed to the vehicle;

(b) any amount recoverable from the owner of the vehicle under Article 15; and

(c) such charge in respect of the immobilisation and release of the vehicle as may be prescribed.

(3) A vehicle to which an immobilisation device has been fixed in accordance with this Order may only be released from the device by or under the direction of a person authorised by the **[**[F6]enforcement authority **]** .

(4) A person who, without being authorised to do so in accordance with this Article removes or attempts to remove an immobilisation device fixed to the vehicle in accordance with this Order shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**F6** Words in arts. 5-28 (except arts. 8(3)(4), 18(6), 21(8), 24(1)) substituted (1.4.2015) by Off-street Parking (Functions of District Councils) Act (Northern Ireland) 2015 (c. 3), art. 1(8), **Sch. para. 8**

**Modifications etc. (not altering text)**

**C1** Arts. 3-28: transfer of functions (1.4.2015) by Off-street Parking (Functions of District Councils) Act (Northern Ireland) 2015 (c. 3), **arts. 1(3)**(8) (with art. 1(5))

**Commencement Information**

**I2** Art. 20 wholly in force at 30.10.2006; art. 20(2) in force at 20.8.2005 see art. 1(2); art. 20(1)(3)(4) in force at 30.10.2006 by S.R. 2006/347, **art. 2**, Sch.

### Removal of vehicles by the [[F7]enforcement authority]

**21.**—(1) The **[**[F7]enforcement authority **]** may remove to another place a stationary vehicle [F8]... if—

(a) a traffic attendant has fixed a penalty charge notice to the vehicle; or

(b) an amount is recoverable **[**[F9]by the enforcement authority**]** from the owner of the vehicle under Article 15 and prescribed conditions are satisfied.

**[**[F10](1A) The power of an enforcement authority under paragraph (1) isexercisable only—

(a) in the case of a district council, in relation to a vehicle in an off-street parking place in the district of the council (other than one operated as a "park and ride" or "park and share" parking place);

(b) in the case of the Department, in relation to a vehicle on a public road or in an off-street parking place operated as a "park and ride" or "park and share" parking place.**]**

(2) The **[**[F7]enforcement authority**]** may remove a vehicle under paragraph (1) in such manner as it thinks necessary and may take such measures in relation to the vehicle as it thinks necessary to enable the vehicle to be removed.

(3) The power of removal conferred by paragraph (1) in relation to a vehicle before it was moved shall continue to be exercisable in relation to the vehicle while it remains in the place to which it was moved.

(4) The **[**[F7]enforcement authority **]** shall take such steps as are reasonably necessary for the safe custody of a vehicle which is removed under paragraph (1) to a place which is not on a public road.

(5) Paragraph (4) shall not apply if in the opinion of the **[**[F7]enforcement authority**]** the vehicle is in such a condition that it ought to be destroyed.

(6) The power of removal conferred by paragraph (1) in relation to a vehicle includes power to remove from the vehicle any of its contents where—

(a) it is reasonable to do so to facilitate the removal of the vehicle;

(b) there is good reason for storing them at a different place from the vehicle; or

(c) their condition requires them to be disposed of without delay.

(7) A person who intentionally obstructs or impedes, or assists another person to obstruct or impede, the removal of a vehicle under this Article shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(8) It shall be the duty of the Department to prescribe conditions for the purposes of paragraph (1)(b).

**F7** Words in arts. 5-28 (except arts. 8(3)(4), 18(6), 21(8), 24(1)) substituted (1.4.2015) by Off-street Parking (Functions of District Councils) Act (Northern Ireland) 2015 (c. 3), art. 1(8), **Sch. para. 8**

**F8** Words in art. 21(1) omitted (1.4.2015) by virtue of Off-street Parking (Functions of District Councils) Act (Northern Ireland) 2015 (c. 3), art. 1(8), **Sch. para. 10(2)(a)**

**F9** Words in art. 21(1)(b) inserted (1.4.2015) by Off-street Parking (Functions of District Councils) Act (Northern Ireland) 2015 (c. 3), art. 1(8), **Sch. para. 10(2)(b)**

**F10** Art. 21(1A) inserted (1.4.2015) by Off-street Parking (Functions of District Councils) Act (Northern Ireland) 2015 (c. 3), art. 1(8), **Sch. para. 10(3)**

**Modifications etc. (not altering text)**

**C1** Arts. 3-28: transfer of functions (1.4.2015) by Off-street Parking (Functions of District Councils) Act (Northern Ireland) 2015 (c. 3), **arts. 1(3)**(8) (with art. 1(5))

**Commencement Information**

**I3** Art. 21 wholly in force at 30.10.2006; art. 21(1)(b)(8) in force at 20.8.2005 see art. 1(2); art. 21(1)(a)(2)-(7) in force at 30.10.2006 by S.R. 2006/347, **art. 2**, Sch.

### Exemption from Article 21

**22.** Where under Article 5(1)(a) a traffic attendant fixes a penalty charge notice to a vehicle in a parking place in respect of a contravention which consists of, or arises out of, a failure to—

(a) pay a parking charge;

(b) display a ticket or parking device properly; or

(c) remove the vehicle from the parking place by the end of the period for which the appropriate charge was paid,

the **[**[F11]enforcement authority**]** shall not remove the vehicle under Article 21(1)(a) until 15 minutes have elapsed from the time when the traffic attendant fixes the penalty charge notice to the vehicle.

**F11** Words in arts. 5-28 (except arts. 8(3)(4), 18(6), 21(8), 24(1)) substituted (1.4.2015) by Off-street Parking (Functions of District Councils) Act (Northern Ireland) 2015 (c. 3), art. 1(8), **Sch. para. 8**

**Modifications etc. (not altering text)**

**C1** Arts. 3-28: transfer of functions (1.4.2015) by Off-street Parking (Functions of District Councils) Act (Northern Ireland) 2015 (c. 3), **arts. 1(3)**(8) (with art. 1(5))

**Disposal or recovery of vehicles removed under Article 21**

**23.**—(1) Subject to paragraphs (2) and (3), the **[**[F11]enforcement authority**]** may, in such manner as it thinks fit, dispose of a vehicle which has been removed by the **[**[F11]enforcement authority**]** under Article 21.

(2) The **[**[F11]enforcement authority **]** shall not dispose of a vehicle under paragraph (1)—

(a) before the end of the period of 35 days from the removal date; and

(b) unless—

(i) the owner of the vehicle has failed to comply with a notice served on him requiring him to remove the vehicle from the custody of the **[**[F11]enforcement authority**]** within 21 days from the date of the notice; or

(ii) the **[**[F11]enforcement authority**]** has been unable to serve such a notice.

(3) If before a vehicle is disposed of by the **[**[F11]enforcement authority**]** under paragraph (1), the vehicle is claimed by a person who satisfies the **[**[F11]enforcement authority**]** —

(a) that he is the owner of the vehicle or is acting with the authority of the owner, and

(b) that the relevant charges have been paid,

the **[**[F11]enforcement authority**]** shall permit him to remove the vehicle from its custody.

(4) If, before the expiration of one year from the date on which a vehicle is sold in pursuance of this Article, any person satisfies the **[**[F11]enforcement authority**]** that at the time of the sale he was the owner of the vehicle, the **[**[F11]enforcement authority**]** shall pay him any sum by which the proceeds of sale exceed the relevant charges.

(5) If the relevant charges exceed the proceeds of sale, the amount of the difference shall be recoverable by the **[**[F11]enforcement authority**]** from the person who was the owner of the vehicle on the removal date and Article 15(5) shall apply to that amount and any costs reasonably incurred by the **[**[F11]enforcement authority**]** as it applies in relation to a sum recoverable under that Article.

(6) The **[**[F11]enforcement authority**]** may dispose of the contents of a vehicle (including those removed from the vehicle under Article 21(6)) and references in paragraphs (4) and (5) to the proceeds of sale include any proceeds of sale of the contents.

(7) In this Article—

"relevant charges" means—

(a) the penalty charge payable if a penalty charge notice was fixed to the vehicle;

(b) any amount recoverable under Article 15 from the person who was the owner of the vehicle on the removal date; and

(c) such charges in respect of the removal and storage, and in paragraph (4) disposal, of the vehicle as may be prescribed;

"removal date" means the date on which the vehicle was removed (or first removed) under Article 21.

(8) If in the case of any vehicle it appears to the **[**[F11]enforcement authority**]** that more than one person is or was the owner of the vehicle at the time of the sale, such one of them as the **[**[F11]enforcement authority**]** thinks fit shall be treated as the owner of the vehicle for the purposes of paragraphs (3) and (4).

**F11** Words in arts. 5-28 (except arts. 8(3)(4), 18(6), 21(8), 24(1)) substituted (1.4.2015) by Off-street Parking (Functions of District Councils) Act (Northern Ireland) 2015 (c. 3), art. 1(8), **Sch. para. 8**

**Modifications etc. (not altering text)**

**C1** Arts. 3-28: transfer of functions (1.4.2015) by Off-street Parking (Functions of District Councils) Act (Northern Ireland) 2015 (c. 3), **arts. 1(3)**(8) (with art. 1(5))

**Commencement Information**

**I4** Art. 23 wholly in force at 30.10.2006; art. 23(7) in force at 20.8.2005 see art. 1(2); art. 23(1)-(6)(8) in force at 30.10.2006 by S.R. 2006/347, **art. 2**, Sch.

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

**24.**—(1) The Department may make regulations modifying the application of Articles 18 to 23 in relation to amounts recoverable under Article 15.

(2) The power conferred by paragraph (1) includes power to make additional provisions.

**Modifications etc. (not altering text)**

**C1** Arts. 3-28: transfer of functions (1.4.2015) by Off-street Parking (Functions of District Councils) Act (Northern Ireland) 2015 (c. 3), **arts. 1(3)**(8) (with art. 1(5))

### Representations in relation to immobilisation or removal of vehicles

**25.**—(1) Where—

(a) a vehicle to which an immobilisation device has been fixed is released in accordance with Article 20;

(b) a vehicle is removed from the custody of the **[**[F12]enforcement authority **]** in accordance with Article 23(3); or

(c) the owner of a vehicle receives any sum under Article 23(4) or is informed that the proceeds of sale of the vehicle did not exceed the relevant charges,

the **[**[F12]enforcement authority**]** shall inform the relevant persons as soon as practicable in writing of their rights to make representations under this Article and of the effect of Articles 26 to 28.

(2) For the purposes of this Article the relevant persons are the owner of the vehicle and, if he is not the owner, the person who paid the relevant charges under Article 20 or 23.

(3) Where it appears to a relevant person that one or more of the relevant grounds are satisfied, he may make representations in writing to the **[**[F12]enforcement authority**]** before the end of the period of 28 days from the date on which he is informed under paragraph (1) of his right to make representations.

(4) The grounds are—

(a) in a case within paragraph (1)(a)—

(i) that an immobilisation device should not have been fixed to the vehicle because of Article 19(1); or

(ii) that the **[**[F12]enforcement authority**]** did not comply with Article 19(2);

(b) where an immobilisation device was fixed to the vehicle under Article 18(1)(a) or the vehicle was removed under Article 21(1)(a)—

(i) that there were no reasonable grounds for the traffic attendant to believe that a penalty charge was payable in respect of the vehicle;

(ii) that at the time of the alleged contravention the vehicle was in the control of a person without the consent of the owner; or

(iii) that it would be unreasonable to regard the owner as responsible for the alleged contravention because the vehicle had previously been in the control of a person without his consent;

(c) where an immobilisation device was fixed to the vehicle under Article 18(1)(b) or the vehicle was removed under Article 21(1)(b), that no amount was recoverable from the owner of the vehicle under Article 15 or that prescribed conditions mentioned in Article 18(1)(b) or 21(1)(b) were not satisfied;

(d) where the vehicle was removed under Article 21(1)(a), that the **[**[F12]enforcement authority**]** did not comply with Article 22;

(e) that the charges under Article 20(1) or 23(3)(b) exceeded the amount applicable in the circumstances of the case.

(5) The **[**[F12]enforcement authority**]** shall before the end of the period of 56 days beginning with the date on which it receives any representations under this Article—

(a) consider any representations made under this Article and any supporting evidence which the person making them provides; and

(b) serve on that person notice of its decision as to whether it accepts that the ground in question has been established.

**F12** Words in arts. 5-28 (except arts. 8(3)(4), 18(6), 21(8), 24(1)) substituted (1.4.2015) by Off-street Parking (Functions of District Councils) Act (Northern Ireland) 2015 (c. 3), art. 1(8), **Sch. para. 8**

**Modifications etc. (not altering text)**

**C1** Arts. 3-28: transfer of functions (1.4.2015) by Off-street Parking (Functions of District Councils) Act (Northern Ireland) 2015 (c. 3), **arts. 1(3)**(8) (with art. 1(5))

### Refund of sums if representations accepted

**26.**—(1) Where the **[**[F12]enforcement authority**]** serves notice under Article 25(5)(b) that it accepts that a ground has been established, it shall (when serving that notice) refund any sums—

(a) paid under Article 20(1) or 23(3), or

(b) deducted from the proceeds of sale under Article 23(4),

except to the extent (if any) to which those sums were properly paid.

(2) Where the **[**[F12]enforcement authority**]** fails to comply with Article 25(5)(b) before the end of the period of 56 days mentioned there—

(a) the **[**[F12]enforcement authority **]** shall be taken to have accepted that the ground in question has been established and to have served notice to that effect under Article 25(5)(b); and

(b) paragraph (1) shall have effect as if it required any refund to be made immediately after the end of that period.

**F12** Words in arts. 5-28 (except arts. 8(3)(4), 18(6), 21(8), 24(1)) substituted (1.4.2015) by Off-street Parking (Functions of District Councils) Act (Northern Ireland) 2015 (c. 3), art. 1(8), **Sch. para. 8**

**Modifications etc. (not altering text)**

**C1** Arts. 3-28: transfer of functions (1.4.2015) by Off-street Parking (Functions of District Councils) Act (Northern Ireland) 2015 (c. 3), **arts. 1(3)**(8) (with art. 1(5))

### Rejection of representations

**27.** Where the **[**[F12]enforcement authority **]** serves a notice of rejection, the notice must—

(a) inform the person on whom it is served of his right to appeal to an adjudicator under Article 28;

(b) describe in general terms the form and manner in which such an appeal must be made;

(c) indicate the nature of an adjudicator's power to award costs; and

(d) contain such other information as the **[**[F12]enforcement authority**]** considers appropriate.

**F12** Words in arts. 5-28 (except arts. 8(3)(4), 18(6), 21(8), 24(1)) substituted (1.4.2015) by Off-street Parking (Functions of District Councils) Act (Northern Ireland) 2015 (c. 3), art. 1(8), **Sch. para. 8**

**Modifications etc. (not altering text)**

**C1** Arts. 3-28: transfer of functions (1.4.2015) by Off-street Parking (Functions of District Councils) Act (Northern Ireland) 2015 (c. 3), **arts. 1(3)**(8) (with art. 1(5))

### Appeal to an adjudicator

**28.**—(1) Where the **[**[F12]enforcement authority**]** serves a notice of rejection, the person making representations under Article 25 may appeal to an adjudicator against the enforcement authority **[**[F13]enforcement authority's**]** decision before the end of the period of 28 days from the date of that notice or such longer period as an adjudicator may allow.

(2) On an appeal under this Article, 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 Article 25(4).

(3) If the adjudicator concludes—

(a) that any ground has been established; and

(b) that the **[**[F12]enforcement authority**]** would have been under the duty imposed by Article 26(1) to refund any sum if it had served notice that it accepted that the ground in question had been established,

he shall serve notice of his decision on the appellant and the **[**[F12]enforcement authority**]** and shall direct the **[**[F12]enforcement authority**]** to make the necessary refund.

(4) The **[**[F12]enforcement authority**]** shall comply with any directions under paragraph (3) forthwith.

**F12** Words in arts. 5-28 (except arts. 8(3)(4), 18(6), 21(8), 24(1)) substituted (1.4.2015) by Off-street Parking (Functions of District Councils) Act (Northern Ireland) 2015 (c. 3), art. 1(8), **Sch. para. 8**

**F13** Words in art. 28(1) substituted (1.4.2015) by Off-street Parking (Functions of District Councils) Act (Northern Ireland) 2015 (c. 3), art. 1(8), **Sch. para. 11**

**Modifications etc. (not altering text)**

**C1** Arts. 3-28: transfer of functions (1.4.2015) by Off-street Parking (Functions of District Councils) Act (Northern Ireland) 2015 (c. 3), **arts. 1(3)**(8) (with art. 1(5))

**Changes to legislation:**
There are currently no known outstanding effects for the The Traffic Management (Northern Ireland) Order 2005, Immobilisation and removal of vehicles.