
SCOTTISH STATUTORY INSTRUMENTS

2011 No. 442

**The Bus Lane Contraventions (Charges, Adjudication
and Enforcement) (Scotland) Regulations 2011**

PART V

APPEALS AGAINST CHARGES

Making an appeal

12.—(1) A person on whom a charge notice has been served may, on any of the statutory grounds of appeal, appeal to the adjudicator against the imposition of the charge if—

- (a) that person has made representations to the authority under regulation 9; and
- (b) that person has received from the authority a notice of rejection.

(2) An appeal is to be made by a notice of appeal sent to the proper officer.

(3) A notice of appeal—

- (a) must be in writing and signed by the appellant or the appellant's authorised agent;
- (b) must state the full name and address of the appellant;
- (c) may specify some other address as being the address to which the appellant wishes documents to be sent to him or her in connection with the appeal;
- (d) must state the name of the authority by which the decision to impose the charge was made and the date and reference number of the charge notice concerned;
- (e) may include any additional representations on any of the statutory grounds of appeal which the appellant desires to make; and
- (f) may include a request for a hearing.

(4) The notice of appeal is to be sent to the proper officer within the period of 28 days beginning with the date of service of the notice of rejection ("the appeal period").

(5) If the notice of appeal is sent to the proper officer outside the appeal period, the appellant must include in the notice a statement of the reasons on which the appellant relies for justifying the delay.

(6) The adjudicator is to treat any such statement as a request to extend the appeal period and, if the adjudicator thinks fit, may direct that the period be extended accordingly.

Action on receipt of notice of appeal

13.—(1) On receiving a notice of appeal the proper officer is to send an acknowledgement of its receipt to the appellant.

(2) If the proper officer is satisfied that the notice is in accordance with regulation 12, the proper officer is to—

- (a) enter particulars of the appeal in the register;
- (b) send to the authority a copy of the notice of appeal; and

- (c) notify the appellant and the authority of any direction given by the adjudicator under regulation 12(6).
- (3) Within 21 days of the receipt of a copy of a notice of appeal, the authority is to deliver to the proper officer a copy of—
 - (a) the charge notice concerned;
 - (b) any representations made to the authority in respect of the decision to impose the charge; and
 - (c) the notice of rejection.
- (4) If a notice of appeal—
 - (a) is received by the proper officer and the proper officer considers that it is not in accordance with regulation 12; or
 - (b) is sent outside the appeal period with a request to extend the appeal period and the adjudicator declines to direct that the period be extended,

the proper officer must inform the appellant of the reasons why the proper officer considers that the notice does not accord with regulation 12 or, as the case may be, that the adjudicator has declined the request for an extension and must record the action taken in the register.

Further representations

14.—(1) A party may, at any time before the determination of the appeal, deliver further representations on any of the statutory grounds of appeal to the proper officer.

(2) The adjudicator may invite a party to send to the proper officer representations dealing with such matters relating to the appeal as may be specified and any such representations are to be sent within the time and in the manner specified.

(3) Where a party fails to respond to an invitation under paragraph (2), the adjudicator may draw such inferences as appear to the adjudicator proper.

(4) Any representations sent under this regulation are to be signed by the party in question or the party's authorised representative.

(5) The proper officer is to send to the authority a copy of any representations sent by the appellant under paragraph (1) or (2).

(6) Where the authority sends representations to the proper officer under either of those paragraphs, it is at the same time to send a copy to the appellant.

Disposing of an appeal without a hearing

15.—(1) Subject to the provisions of this Part, the adjudicator may decide the general procedure to be followed in connection with appeals and may dispose of an appeal without a hearing, unless in the adjudicator's opinion the appeal raises issues of public importance such as to require that a hearing be held.

(2) If either party has requested a hearing, the adjudicator must not dispose of an appeal without a hearing unless—

- (a) the request is withdrawn before notice of a hearing has been sent to the other party; or
- (b) both parties have subsequently consented to the appeal being disposed of without a hearing.

(3) Where the adjudicator is minded to dispose of an appeal without a hearing, the adjudicator—

- (a) is to inform the parties of that intention; and
- (b) must not dispose of the appeal without a hearing unless—

- (i) there has elapsed a period of 28 days beginning with the date on which an acknowledgement is sent in accordance with regulation 13(1) during which neither party has requested a hearing; or
- (ii) both parties have consented to its disposal without a hearing.

Notice of time and place of hearing

16.—(1) This regulation applies where a hearing is to be held for the purpose of disposing of an appeal.

(2) The proper officer must—

- (a) fix the time and place of the hearing; and
- (b) not less than 21 days before the time so fixed, or such shorter time as the parties agree—
 - (i) send to each party a notice that the hearing is to be at that time and place; or
 - (ii) inform them of those matters in such other manner as the proper officer thinks fit.

(3) The adjudicator may alter the time and place of any hearing, and the proper officer must, not less than seven days before the date on which the hearing is then to be held, or such shorter time as the parties agree—

- (a) send to each party notice of the new time and place of the hearing; or
- (b) inform them of those matters in such other manner as the proper officer thinks fit.

(4) This regulation applies to an adjourned hearing but, if, before the adjournment, the time and place of the adjourned hearing are notified to all persons expected to attend, no further notice will be required.

Power to require attendance and production of documents

17.—(1) The adjudicator may, by notice in writing sent to any person, require that person—

- (a) to attend, at a time and place specified by the adjudicator, to give evidence at the hearing of an appeal; and
- (b) to produce any documents in that person's custody or under that person's control, relating to any matter in the proceedings,

and any such notice is to contain a statement of the effect of paragraphs (2) to (5) below.

(2) A person in respect of whom a requirement has been made under paragraph (1) may apply to the adjudicator to vary or set aside that requirement.

(3) A person is not bound to comply with a requirement under paragraph (1)(a) unless—

- (a) that person has been given at least seven days' notice of the hearing; or
- (b) if less than seven days' notice has been given, that person has informed the adjudicator that that person accepts such notice as that person has been given.

(4) No person is to be required under paragraph (1) to give any evidence or produce any document which that person would be entitled to refuse to give or produce in proceedings in a court.

(5) If any person who is required under paragraph (1) to attend a hearing held by an adjudicator, or to produce any document to an adjudicator, fails without reasonable excuse to do so, that person commits an offence and is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

Procedure at a hearing

18.—(1) At the beginning of the hearing of an appeal the adjudicator is to explain the procedure which the adjudicator proposes to adopt.

(2) Subject to the provisions of this regulation, the adjudicator is to conduct the hearing of an appeal in such manner as the adjudicator considers most suitable to the clarification of the issues before the adjudicator and generally to the just handling of the proceedings and the adjudicator is to seek, so far as appears to the adjudicator appropriate, to avoid formality in the proceedings.

(3) Any hearing of an appeal by the adjudicator is to be in public except where the adjudicator is satisfied that, by reason of exceptional circumstances, it is just and reasonable for the hearing, or part of it, to be in private.

(4) The following persons are entitled to attend the hearing of an appeal whether or not it is in private—

- (a) any other adjudicator; and
- (b) a member of the Administrative Justice and Tribunals Council or of the Scottish Committee of that Council.

(5) The adjudicator, with the consent of the parties, may permit any other person to attend the hearing of an appeal which is held in private or, where part of it is so held, that part.

(6) The adjudicator may exclude from the hearing of an appeal, or part of it, any person whose conduct has disrupted or is likely, in the opinion of the adjudicator, to disrupt the hearing.

(7) Subject to paragraph (9), at the hearing the authority may be represented by a solicitor, counsel or any other person.

(8) At the hearing of an appeal, the appellant may conduct the appellant's case personally (with assistance from any person if the appellant wishes) or may be represented by a solicitor, counsel or any other person.

(9) If in any particular case the adjudicator is satisfied that there are good and sufficient reasons for doing so, the adjudicator may refuse to permit a particular person to assist or represent either party at the hearing.

(10) At the hearing of an appeal—

- (a) the parties are entitled to give evidence, to call witnesses, to question any witness and to address the adjudicator both on the evidence and generally on the subject matter of the appeal; and
- (b) the adjudicator may receive evidence of any fact which appears to the adjudicator to be relevant notwithstanding that such evidence would be inadmissible in proceedings before a court of law.

(11) Where a party who has been sent a notice of the hearing of an appeal, or otherwise informed of the hearing in accordance with regulation 16, fails to attend or be represented at the hearing, the adjudicator may dispose of the appeal in the absence of that party.

Evidence by production of record

19.—(1) The adjudicator may permit evidence of the fact of a contravention to be given by the production of—

- (a) a record produced by an approved device; and
- (b) in the same or another document, a certificate as to the circumstances in which the record was produced, signed by a person authorised in that behalf by the authority.

(2) A document stated in evidence to be such a record as is mentioned in paragraph (1)(a), or such a certificate as is mentioned in paragraph (1)(b), is to be treated as such a record or certificate, unless the contrary is proved.

Decisions on appeals

20.—(1) The adjudicator must determine the appeal after considering all the evidence and all representations made by or on behalf of the parties.

(2) The adjudicator must state the reasons for the decision.

(3) Where an appeal is disposed of at a hearing, the adjudicator may give the adjudicator's decision and the reasons orally at the end of the hearing, or may reserve the adjudicator's decision and give the adjudicator's reasons subsequently in writing.

(4) An adjudicator who decides to allow an appeal may give the authority such directions as the adjudicator considers appropriate.

(5) It is the duty of an authority to whom a direction is given under paragraph (4) to comply with it without delay.

(6) When the decision is given (whether at a hearing or otherwise), the proper officer must—

(a) without delay record in the register the decision, the adjudicator's reasons and any directions given; and

(b) send a copy of the register entry to each party.

Review of adjudicator's or proper officer's decision

21.—(1) The adjudicator may, on the application of a party, review and revoke or vary any decision to reject a notice of appeal or to dismiss or allow an appeal, or any decision as to expenses, on the grounds (in each case) that—

(a) the decision was wrongly made as the result of an administrative error;

(b) the proper officer was wrong to reject the notice of appeal;

(c) a party who failed to appear or be represented at a hearing had good and sufficient reason for that party's failure to appear;

(d) where the decision was made after a hearing, new evidence has become available since the conclusion of the hearing, the existence of which could not reasonably have been known or foreseen;

(e) where the decision was made without a hearing, new evidence has become available since the decision was made, the existence of which could not reasonably have been known or foreseen; or

(f) the interests of justice require such a review.

(2) The adjudicator may, on the application of a party, review and revoke or vary any decision not specified in paragraph (1).

(3) An application under paragraph (1) or (2) must—

(a) be delivered to the proper officer within the period of 14 days beginning with the date on which the copy of the register entry is served on the party making the application; and

(b) state the grounds in full.

(4) The parties are to have the opportunity to be heard on any application for review under paragraph (1) or (2).

(5) If, having reviewed the decision, the adjudicator directs that it be set aside, the adjudicator must substitute such decision as the adjudicator thinks fit or order a re-determination by the same or a different adjudicator.

(6) Regulation 20 applies to a decision under this regulation as it applies to a decision made on the disposal of an appeal.

Expenses

22.—(1) The adjudicator must not normally make an order as to expenses, but may, subject to paragraph (2), make such an order—

- (a) against a party (including an appellant who has withdrawn an appeal or an authority that has consented to an appeal being allowed) if the adjudicator is of the opinion that the party has acted frivolously or vexatiously or that the party’s conduct in making, pursuing or resisting an appeal was wholly unreasonable; or
- (b) against the authority, where the adjudicator considers that the decision appealed against was wholly unreasonable.

(2) An order is not to be made under paragraph (1) against a party unless that party has been given an opportunity to make representations against the making of the order.

(3) An order under paragraph (1) must require the party against whom it is made to pay the other party a specified sum in respect of the expenses incurred by that other party in connection with the proceedings.

Recovery of amount payable under regulation 22

23. Any amount which is payable under an order under regulation 22 is recoverable by the person to whom the amount is payable, as if it were payable under an extract decree arbitral bearing a warrant for execution issued by the sheriff for any sheriffdom.

Conjoining of appeals

24.—(1) Where two or more appeals are pending and it appears to the adjudicator—

- (a) that a question of law or fact common to both or all the appeals arises; or
- (b) for some other reason it is desirable to make an order under this regulation,

the adjudicator may order that some or all of the appeals as may be specified in the order, are to be conducted together, and may give such consequential directions as appear to the adjudicator to be necessary.

(2) An order is not to be made under this regulation unless all parties concerned have been given an opportunity to make representations against the making of such an order.

Miscellaneous powers of the adjudicator

25.—(1) The adjudicator may, if the adjudicator thinks fit—

- (a) extend the time appointed by or under this Part for doing any act notwithstanding that the time appointed may have expired;
- (b) if the appellant at any time delivers to the proper officer notice of the withdrawal of the appellant’s appeal, dismiss the proceedings;
- (c) if the authority consents to an appeal being allowed, allow the appeal;
- (d) if the parties agree in writing on the terms of a decision to be made by an adjudicator, decide accordingly; or

(e) adjourn a hearing.

(2) The powers of the adjudicator conferred by these Regulations, other than regulation 21, may be exercised on the adjudicator's own initiative or on the application of a party.

Correction of clerical mistakes and errors

26. Clerical mistakes in any document recording a direction or decision of the adjudicator, or errors in such a document arising from an accidental slip or omission, may be corrected by the proper officer on the direction of the adjudicator.

Service of documents on the parties

27.—(1) This regulation has effect in relation to any notice or other document required or authorised by these Regulations to be sent to a party to an appeal.

(2) Any document is to be regarded as having been sent to that party if it is—

- (a) delivered personally to that party;
- (b) left at that party's proper address;
- (c) sent by post to that party at that address; or
- (d) transmitted to that party by fax or by email in accordance with paragraph (3).

(3) A document may be transmitted to a party by fax or by email where—

- (a) the party has indicated in writing that the party is willing to regard a document as having been duly sent to the party if it is transmitted to a specified fax telephone number or, as the case may be, a specified email address; and
- (b) the document is transmitted to that number or address.

(4) In the case of an authority, an indication under paragraph (3)(a) may be expressed to apply in relation to any appeal to which it is the respondent.

(5) Where the proper address includes a box number at a document exchange the delivery of such a document may be effected by leaving the document addressed to that box number—

- (a) at that document exchange; or
- (b) at a document exchange which transmits documents every working day to that exchange,

and any such document so left is to be taken to have been delivered on the second working day after the day on which it was left.

(6) For the purposes of these Regulations—

- (a) the proper address of the appellant is the address for service specified pursuant to regulation 12(3)(c) or, if no address is so specified, the address specified pursuant to regulation 12(3)(b); and
- (b) the proper address of an authority in proceedings in which it is the respondent is such address as the authority from time to time specifies in a notice delivered to the proper officer as being the authority's address for service in all such proceedings.

(7) A party may at any time, by notice in writing delivered to the proper officer, change that party's proper address for the purposes of this Part.

(8) A party may, by notice in writing delivered to the proper officer, vary or revoke any indication given under paragraph (3)(a).

(9) A notice or document—

- (a) left at the proper address of a party is to be taken to have been delivered on the first working day after the day on which it was left;

- (b) sent by fax or other means of electronic transmission is to be taken to have been delivered on the first working day after the day on which it was transmitted.

Delivery of notices or documents to the proper officer

28.—(1) This regulation has effect in relation to any notice or other document required or authorised by or under this Part to be delivered to the proper officer.

(2) Any such notice or document may be delivered to the proper officer by being transmitted to the proper officer by fax or by email, but only to a telephone number or, as the case may be, email address for the time being published by the proper officer for the purpose of receiving such notices or documents.

(3) Any notice or document so transmitted is to be taken to have been delivered on the first working day after the day on which it was transmitted.

(4) Where the address of the proper officer includes a box number at a document exchange the delivery of such a document may be effected by leaving the document addressed to that box number—

- (a) at that document exchange; or

- (b) at a document exchange which transmits documents every working day to that exchange, and any such document so left is to be taken to have been delivered on the second working day after the day on which it was left.

(5) Regulations 12(3)(a) and 14(4)—

- (a) will, in the case of a document transmitted by fax, be satisfied if a copy of the signature of the relevant person appears on the transmitted copy; and

- (b) will not apply in relation to a document transmitted by email.

The register

29.—(1) The adjudicator for each approved local authority must establish and maintain a register for the purposes of recording proceedings conducted under this Part.

(2) The register is to be kept open for inspection by any person without charge at all reasonable hours at the accommodation provided for adjudicators.

(3) The register may be kept in electronic form.

(4) If the register is kept in electronic form, the duty to allow inspection is to be treated as a duty to allow inspection of a reproduction in legible form of the recording of the entry the inspection of which is being sought.

(5) A document purporting to be certified by the proper officer as a true copy of any entry of a decision in the register is to be evidence of the entry and of the matters contained in it.