
STATUTORY INSTRUMENTS

2008 No. 608

**The Civil Enforcement of Parking Contraventions
(Representations and Appeals) (Wales) Regulations 2008**

PART 2

REPRESENTATIONS AND APPEALS IN RELATION TO NOTICES TO OWNER

Scope of Part 2 and duty to notify rights to make representations and to appeal

3.—(1) Regulations 4 to 7 have effect where a penalty charge which has become payable under the General Provisions Regulations has not been paid and either—

- (a) a penalty charge notice has been served by a civil enforcement officer under regulation 5 of the Enforcement and Adjudication Regulations, and a notice to owner served by the enforcement authority under regulation 11 of those Regulations; or
- (b) a penalty charge notice has been served under regulation 6 of the Enforcement and Adjudication Regulations.

(2) A penalty charge notice served under regulation 5 of the Enforcement and Adjudication Regulations must, in addition to the matters required to be included in it under paragraph 1 of the Schedule to the those Regulations, include the following information—

- (a) that a person on whom a notice to owner is served will be entitled to make representations to the enforcement authority against the penalty charge and may appeal to an adjudicator if those representations are rejected; and
- (b) that, if representations against the penalty charge are received at such address as may be specified for the purpose before a notice to owner is served—
 - (i) those representations will be considered;
 - (ii) but that, if a notice to owner is served notwithstanding those representations, representations against the penalty charge must be made in the form and manner and at the time specified in the notice to owner.

(3) A notice to owner served under regulation 11 of the Enforcement and Adjudication Regulations must, in addition to the matters required to be included in it under that regulation, include the following information—

- (a) that representations on the basis specified in regulation 4 against payment of the penalty charge may be made to the enforcement authority but that any representations made outside the period of 28 days beginning with the date on which the notice is served (“the payment period”) may be disregarded;
- (b) the nature of the representations which may be made under regulation 4;
- (c) the address (including if appropriate any email address or FAX telephone number, as well as the postal address) to which representations must be sent and the form in which they must be made;
- (d) that if representations which have been made—

- (i) within the payment period; or
- (ii) outside that period but not disregarded,

are not accepted by the enforcement authority the recipient of the notice may appeal against the authority's decision to an adjudicator; and

- (e) in general terms, the form and manner in which an appeal may be made.

(4) A penalty charge notice served under regulation 6 of the Enforcement and Adjudication Regulations must, in addition to the matters required to be included in it under paragraph 2 of the Schedule to the those Regulations, include the following information—

- (a) that representations on the basis specified in regulation 4 may be made to the enforcement authority against the imposition of the penalty charge but that representations made outside the period of 28 days beginning with the date on which the penalty charge notice is served ("the representations period") may be disregarded;
- (b) the nature of the representations which may be made under regulation 4;
- (c) the address (including if appropriate any email or FAX telephone number, as well as postal, address) to which representations must be sent and the form in which they must be made;
- (d) that, if representations which have been made—
 - (i) within the representations period; or
 - (ii) outside that period but not disregarded,

are not accepted by the enforcement authority the recipient of the penalty charge notice may appeal against the authority's decision to an adjudicator;

- (e) where the penalty charge notice is served by virtue of regulation 6(1)(a) of the Enforcement and Adjudication Regulations (evidence produced by an approved device), the effect of paragraphs (5) and (6).

(5) The recipient of a penalty charge notice served under regulation 6 of the Enforcement and Adjudication Regulations notice may, by notice in writing to the enforcement authority, request it—

- (a) to make available at one of its offices specified by him, free of charge and at a time during normal office hours so specified, for viewing by him or by his representative, the record of the contravention produced by the approved device pursuant to which the penalty charge was imposed; or
- (b) to provide him, free of charge, with such still images from that record as, in the authority's opinion, establish the contravention.

(6) Where the recipient of the penalty charge notice makes a request under subparagraph (5), the enforcement authority shall comply with the request within a reasonable time.

Representations against notice to owner

4.—(1) The recipient may make representations against the notice to owner to the enforcement authority which served the notice to owner on him.

(2) Any representations under this regulation must—

- (a) be made in such form as may be specified by the enforcement authority;
- (b) be to either or both of the following effects—
 - (i) that in relation to the alleged contravention on account of which the notice to owner was served, one or more of the grounds specified in paragraph (4) applies; or
 - (ii) that, whether or not any of those grounds apply, there are compelling reasons why, in the particular circumstances of the case, the enforcement authority should cancel the penalty charge and refund any sum paid to it on account of the penalty charge.

(3) In determining the form for making representations the enforcement authority must act through the joint committee through which, in accordance with the Enforcement and Adjudication Regulations, it exercises its functions relating to adjudicators.

(4) The grounds referred to in paragraph (2)(b)(i) are—

- (a) that the alleged contravention did not occur;
- (b) that the recipient—
 - (i) never was the owner of the vehicle in question;
 - (ii) had ceased to be its owner before the date on which the alleged contravention occurred; or
 - (iii) became its owner after that date;
- (c) that the vehicle had been permitted to remain at rest in the place in question by a person who was in control of the vehicle without the consent of the owner;
- (d) that the recipient is a vehicle-hire firm and—
 - (i) the 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 his liability in respect of any penalty charge notice served in respect of any parking contravention involving the vehicle during the currency of the hiring agreement;
- (e) that the penalty charge exceeded the amount applicable in the circumstances of the case;
- (f) that there has been a procedural impropriety on the part of the enforcement authority;
- (g) that the order which is alleged to have been contravened in relation to the vehicle concerned, except where it is an order to which Part VI of Schedule 9 to the 1984 Act⁽¹⁾ applies, is invalid;
- (h) in a case where a penalty charge notice was served by post on the basis that a civil enforcement officer was prevented by some person from fixing it to the vehicle concerned or handing it to the owner or person in charge of the vehicle, that a civil enforcement officer was not so prevented;
- (i) that the notice to owner should not have been served because—
 - (i) the penalty charge had already been paid in full;
 - (ii) the penalty charge had been paid, reduced by the amount of any discount set in accordance with Schedule 9 to the 2004 Act, within the period specified in paragraph 1(h) of the Schedule to the Enforcement and Adjudication Regulations.

(5) In these Regulations, “procedural impropriety” means a failure by the enforcement authority to observe any requirement imposed on it by the 2004 Act, by the General Provisions Regulations, by the Enforcement and Adjudication Regulations, or by these Regulations in relation to the imposition or recovery of a penalty charge or other sum, and includes in particular—

- (a) the taking of any step, whether or not involving the service of any document, otherwise than—
 - (i) in accordance with the conditions subject to which; or
 - (ii) at the time or during the period when,it is authorised or required by the General Provisions Regulations, the Enforcement and Adjudication Regulations or these Regulations to be taken; and

(1) 1984 c.27. See Schedule 9, paragraph 34(1) as to the Orders to which Part VI of that Schedule applies; paragraph 34 of Schedule 9 was amended by the Local Government Act 1985 (c.51), Schedule 17 and by the Road Traffic Regulation (Special Events) Act 1994 (c.11), Schedule, paragraph 5.)

(b) in a case where an enforcement authority is seeking to recover an unpaid charge, the purported service of a charge certificate under regulation 13 of the Enforcement and Adjudication Regulations before the enforcement authority is authorised to serve it by such regulations.

(6) Where the ground mentioned in paragraph (4)(b)(ii) is relied on in any representations made under this regulation, those representations must include a statement of the name and address of the person to whom the vehicle was disposed of by the person making the representations (if that information is in his possession).

(7) Where the ground mentioned in paragraph (4)(b)(iii) is relied on in any representations made under this regulation, those representations must include a statement of the name and address of the person from whom the vehicle was acquired by the person making the representations (if that information is in his possession).

(8) Where the ground mentioned in paragraph (4)(d) is relied on in any representations made under this regulation, those representations must include a statement of the name and address of the person to whom the vehicle was hired at the material time.

(9) In this regulation “hiring agreement” and “vehicle-hire firm” have the same meanings as in section 66 of the Road Traffic Offenders Act 1988(2).

Duty of enforcement authority to which representations are made

5.—(1) The enforcement authority may disregard any representations which are received by it after the end of the period of 28 days beginning with the date on which the relevant notice to owner was served.

(2) Where representations are made to the enforcement authority by virtue of regulation 4(1) and in accordance with regulation 4(2) it shall, subject to paragraph (1), be the duty of the enforcement authority—

- (a) to consider the representations and any supporting evidence which the person making them provides; and
- (b) within the period of 56 days beginning with the date on which the representations were served on it, to serve on that person notice of its decision as whether or not it accepts that—
 - (i) one or more of the grounds specified in regulation 4(4) applies; or
 - (ii) there are compelling reasons why, in the particular circumstances of the case, the notice to owner should be cancelled and any sum paid in respect of the penalty charge notice should be refunded.

(3) Where the enforcement authority accepts that a ground specified in regulation 4(4) applies or that there are such compelling reasons it shall—

- (a) cancel the notice to owner; and
- (b) state in the notice served under paragraph (2)(b) that the notice to owner has been cancelled and at the same time refund any sum paid in relation to the notice.

(4) The cancellation of a notice to owner under this regulation shall not be taken to prevent the enforcement authority from serving, in accordance with the Enforcement and Adjudication Regulations, a fresh notice to owner on another person.

(5) If the enforcement authority fails to comply with paragraph (2)(b) within the period of 56 days there specified, it shall be deemed for the purposes of these Regulations to have accepted—

- (a) that such of the grounds referred to in paragraph (2)(b)(i) as were relied upon in the representations apply; or

(b) in a case where paragraph (2)(b)(ii) is relied upon, that there are compelling reasons of the kind referred to in that paragraph, and paragraph (3) shall apply accordingly.

Rejection of representations against notice to owner

6.—(1) Where representations are made under regulation 4(4) and the enforcement authority serves a notice of rejection under regulation 5(2)(b), that notice shall—

- (a) state that a charge certificate may be served 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; 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 served in accordance with paragraph (1) may contain such other information as the enforcement authority considers appropriate.

Appeals to an adjudicator in relation to decisions under regulation 5

7.—(1) Where an enforcement authority serves a notice of rejection under regulation 5(2)(b) in relation to representations made under regulation 4(4), the person who made those representations may appeal to an adjudicator against the authority’s decision—

- (a) before the end of the period of 28 days beginning with the date of service of the notice of rejection; or
- (b) within such longer period as an adjudicator may allow.

(2) If, on an appeal under this regulation, the adjudicator after considering the representations in question together with any other representations made to the effect referred to in regulation 4(2)(b) and any representations made by the enforcement authority concludes that a ground specified in regulation 4(4) applies, he shall allow the appeal and may give such directions to the enforcement authority as he may consider appropriate for the purpose of giving effect to his decision, and such directions may in particular include directions requiring—

- (a) the cancellation of the penalty charge notice;
- (b) the cancellation of the notice to owner; and
- (c) the refund of such sum (if any) as may have been paid to the enforcement authority in respect of the penalty charge.

(3) It shall be the duty of an enforcement authority to which such a direction is given to comply with it forthwith.

(4) If the adjudicator does not allow the appeal but is satisfied that there are compelling reasons why, in the particular circumstances of the case, the notice to owner should be cancelled he may recommend the enforcement authority to cancel the notice to owner.

(5) It shall be the duty of an enforcement authority to which a recommendation is made under paragraph (4) to consider afresh the cancellation of the notice to owner taking full account of any observations by the adjudicator and, within the period of thirty-five days beginning with the date on which the recommendation was given (“the 35-day period”), to notify the appellant and the adjudicator as to whether or not it accepts the adjudicator’s recommendation.

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(6) If the enforcement authority notifies the appellant and the adjudicator that it does not accept the adjudicator's recommendation it shall at the same time inform them of the reasons for its decision.

(7) No appeal to the adjudicator shall lie against the decision of the enforcement authority under paragraph (6).

(8) If the enforcement authority accepts the adjudicator's recommendation it shall forthwith cancel the notice to owner and refund to the appellant any sum paid in respect of the penalty charge.

(9) If the enforcement authority fails to comply with the requirements of paragraphs (5) within the 35-day period, the authority shall be taken to have accepted the adjudicator's recommendation and shall cancel the notice to owner and refund to the appellant any sum paid in respect of the penalty charge immediately after the end of that period.