

2008 No.608

ROAD TRAFFIC, WALES

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

Made - - - - - *6th March 2008*

Coming into force - - - - - *31st March 2008*

CONTENTS

PART 1

PRELIMINARY

1. Citation, commencement and application
2. Interpretation

PART 2

REPRESENTATIONS AND APPEALS IN RELATION TO NOTICES TO OWNER

3. Scope of Part 2 and duty to notify rights to make representations and to appeal
4. Representations against notice to owner
5. Duty of enforcement authority to which representations are made
6. Rejection of representations against notice to owner
7. Appeals to an adjudicator in relation to decisions under regulation 5

PART 3

**REPRESENTATIONS AND APPEALS IN RELATION TO THE IMMOBILISATION OF
VEHICLES**

8. Right to make representations
9. Duty of enforcement authority to which representations are made
10. Appeals to an adjudicator in relation to decisions under regulation 9

PART 4
OFFENCES AND PROCEDURE

11. False representations
12. Procedure to be followed by adjudicators, service of documents and recovery of sums payable

SCHEDULE — PROCEDURE IN ADJUDICATION PROCEEDINGS
PART 1 — INTERPRETATION
PART 2 — PROCEDURE RELATING TO APPEALS
PART 3 — SERVICE OF DOCUMENTS AND NOTICES
PART 2 — DIRECTIONS AS TO INVALID NOTICES
PART 5 — THE REGISTER

The Lord Chancellor makes these Regulations, in exercise of the powers conferred upon him by sections 80 and 89 of the Traffic Management Act 2004(a):

In accordance with section 89(5) of the Traffic Management Act 2004, a draft of these Regulations was laid before, and approved by resolution of, each House of Parliament.

PART 1
PRELIMINARY

Citation, commencement and application

1.—(1) These Regulations may be cited as the Civil Enforcement of Parking Contraventions (Representations and Appeals)(Wales) Regulations 2008 and shall come into force on 31st March 2008.

(2) These Regulations apply to Wales.

Interpretation

2.—(1) In these Regulations—

“the 1984 Act” means the Road Traffic Regulation Act 1984(b);

“the 2004 Act” means the Traffic Management Act 2004;

“appellant” in relation to an appeal under these Regulations or any process connected with such an appeal, means the person bringing the appeal;

“the Enforcement and Adjudication Regulations” means the Civil Enforcement of Parking Contraventions (Penalty Charge Notices, Enforcement and Adjudication) (Wales) Regulations 2008(c);

“the General Provisions Regulations” means the Civil Enforcement of Parking Contraventions (General Provisions) (Wales) Regulations 2008(d);

(a) 2004 c. 18.
(b) 1984 c.27
(c) S.I. 2008/609
(d) S.I. 2008/615 (W66)

“notice of rejection” means a notice served by an enforcement authority rejecting or not accepting representations made to it under regulation 4 or 8;

“notice to owner” has the meaning given in paragraph (2);

“owner” in relation to a vehicle, includes any person who by virtue of regulation 4 of the General Provisions Regulations, falls to be treated as the owner of the vehicle for the purposes of those Regulations;

“penalty charge” means a penalty charge relating to a parking contravention in accordance with regulation 3 of the General Provisions Regulations

“penalty charge notice” has the meaning given by regulation 4(1) of the Enforcement and Adjudication Regulations;

“procedural impropriety” has the meaning given by regulation 4(5); and

“recipient” has the meaning given in paragraph (2).

(2) In these Regulations (except regulation 3)—

(a) references to a “notice to owner” shall be taken—

(i) in a case where a penalty charge notice has been served under regulation 5 of the Enforcement and Adjudication Regulations, as references to a notice to owner as defined by regulation 2(1) of those Regulations;

(ii) in a case where a penalty charge notice has been served under regulation 6 of the Enforcement and Adjudication Regulations, as references to that penalty charge notice; and

(b) references to “the recipient” in relation to a notice to owner shall be taken as references to the person on whom the notice to owner was served.

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^(a) 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.

(a) 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.)

(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
- (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(a).

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

(a) 1988 c.53.

- (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.

(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.

PART 3

REPRESENTATIONS AND APPEALS IN RELATION TO THE IMMOBILISATION OF VEHICLES

Right to make representations

8.—(1) This regulation applies to the owner or person in charge of a vehicle where—

- (a) in accordance with regulation 7 of the General Provisions Regulations an immobilisation device has been fixed to a vehicle found in a civil enforcement area; and
- (b) he secures the release of the vehicle from the device on payment of an amount in accordance with regulation 9 of those Regulations.

(2) A person to whom paragraph (1) applies shall immediately upon the release of the vehicle be informed—

- (a) of his right to make representations to the enforcement authority in accordance with this regulation; and
- (b) of his right to appeal to an adjudicator if his representations are not accepted.

and that information must include a statement of the effect of paragraphs (4) and (5)

(3) The enforcement authority shall give that information, or cause it to be given, in writing.

(4) A person to whom paragraph (1) applies may make representations to the effect —

- (a) that one or more of the grounds specified in paragraph (5) apply; or
- (b) 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 refund some or all of the amount paid to secure the release of the vehicle,

and any such representations shall be in such form as may be specified by the enforcement authority.

(5) The grounds are—

- (a) that the vehicle had not been permitted to remain at rest in the civil enforcement area in circumstances in which a penalty charge was payable under regulation 3 of the General Provisions Regulations;
- (b) that the vehicle had been permitted to remain at rest in the place where it was by a person who was in control of the vehicle without the consent of the owner;

- (c) that the place where the vehicle was at rest was not in a civil enforcement area;
- (d) that, in accordance with regulation 8 of the General Provisions Regulations (limitations on the power to immobilise vehicles), there was in the circumstances of the case no power under those Regulations to immobilise the vehicle at the time at which it was immobilised or at all;
- (e) that the penalty charge or other charge paid to secure the release of the vehicle exceeded the amount applicable in the circumstances of the case: or
- (f) that there has been a procedural impropriety on the part of the enforcement authority.

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

Duty of enforcement authority to which representations are made

9.—(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 person making them is informed under regulation 8(2) of his right to make representations.

(2) Subject to paragraph (1) it shall be the duty of the enforcement authority, if representations are made to it in accordance with regulation 8(4), before the end of the period of 56 days beginning with the date on which it receives the representations—

- (a) to consider them and any supporting evidence which the person making them provides; and
- (b) to serve on that person notice of its decision as to whether or not it accepts that—
 - (i) a ground specified in regulation 8(5) applies; or
 - (ii) there are compelling reasons why, in the particular circumstances of the case, some or all of the sums paid to secure the release of the vehicle should be refunded.

(3) Where an authority serves notice under paragraph (2)(b)(i) that it accepts that such a ground applies, it shall (when serving that notice) refund any sums that the person to whom the vehicle was released was required to pay under regulation 9 of the General Provisions Regulations, except to the extent (if any) to which those sums were properly paid.

(4) Where an authority serves notice under paragraph (2)(b)(ii) that they accept that there are such compelling reasons, they shall refund the sums referred to in paragraph (3) or such of them as they consider appropriate.

(5) Where an authority serves notice under paragraph (2)(b), that notice shall—

- (a) inform the person on whom it is served of his right to appeal to an adjudicator under regulation 10;
- (b) indicate the nature of an adjudicator's power to award costs; and
- (c) describe in general terms the form and manner in which such an appeal is required to be made.

(6) Where an authority fails to comply with paragraph (2) before the end of the period of 56 days mentioned there—

- (a) it shall be deemed to have accepted the representations and to have served notice to that effect under paragraph (2)(b); and
- (b) shall immediately after the end of that period refund all such sums as are mentioned in paragraph (3).

Appeals to an adjudicator in relation to decisions under regulation 9

10.—(1) Where an enforcement authority serves a notice of rejection under regulation 9(2)(b) in relation to representations made under regulation 8(4), the person making those representations may, before the end of—

- (a) the period of 28 days beginning with the date of service of that notice; or
 - (b) such longer period as an adjudicator may allow,
- appeal to an adjudicator against the authority's decision.
- (2) On an appeal under this regulation, the adjudicator shall consider the representations in question and any additional representations which are made by the appellant together with any representations made to him by the enforcement authority.
- (3) If the adjudicator concludes—
- (a) that any of the grounds referred to in regulation 8(5) apply; and
 - (b) that the enforcement authority would have been under the duty imposed by regulation 9(3) to refund any sum if it had served notice that it accepted that the ground in question applied,
- he shall direct that authority to make the necessary refund.
- (4) It shall be the duty of an enforcement authority to which a direction is given under paragraph (3) to comply with it forthwith.
- (5) If the adjudicator makes no direction under paragraph (3) but is satisfied there are compelling reasons why, in the particular circumstances of the case, some or all of the sums paid to secure the release of the vehicle should be refunded, he may recommend the enforcement authority to make such a refund.
- (6) It shall be the duty of an enforcement authority to which a recommendation is made under paragraph (5) to consider afresh the making of a refund of those sums taking full account of any observations by the adjudicator and, within the period of thirty-five days ("the 35-day period") beginning with the date on which the direction was given, to notify the appellant and the adjudicator as to whether or not it accepts the adjudicator's recommendation.
- (7) 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.
- (8) No appeal to the adjudicator shall lie against the decision of the enforcement authority under paragraph (7).
- (9) If the enforcement authority accepts the adjudicator's recommendation it shall make the recommended refund within the 35-day period.
- (10) If the enforcement authority fails to comply with the requirements of paragraph (6) within the 35-day period, the authority shall be taken to have accepted the adjudicator's recommendation and shall make the recommended refund immediately after the end of that period.

PART 4

OFFENCES AND PROCEDURE

False representations

11.—(1) A person who makes any representation under Part 2 or 3 of these Regulations or under the Schedule so far as it relates to an appeal under Part 2 or 3, which is false in a material particular, and does so recklessly or knowing it to be false, is guilty of an offence.

(2) A person convicted of an offence under paragraph (1) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Procedure to be followed by adjudicators, service of documents and recovery of sums payable

12.—(1) The Schedule to these Regulations shall have effect as to procedure, the service of documents in adjudication proceedings and the register.

(2) Subject to the provisions of that Schedule, an adjudicator may regulate his own procedure.

(3) Any amount which is payable—

(a) under an adjudicator's adjudication;

(b) by virtue of any other provision of these Regulations which requires an enforcement authority to refund any sum,

shall, if a county court so orders, be recoverable by the person to whom the amount is payable as if it were payable under a county court order.

(4) Paragraph (3) does not apply to a penalty charge which remains payable following an adjudication under regulation 7.

Date 6th March 2008

Huw Irranca-Davies
Parliamentary Under Secretary of State
Wales Office

PROCEDURE IN ADJUDICATION PROCEEDINGS

PART 1

INTERPRETATION

Interpretation of Schedule**1.—(1)** In this Schedule—

“appeal” means an appeal under regulation 7(1) or 10(1);

“document exchange” means a document exchange providing a system of delivery of documents by reference to numbered boxes at document exchanges (DX);

“fax” means the making of a facsimile copy of a document by the transmission of electronic signals;

“hearing” means an oral hearing;

“proper officer” means a member of the administrative staff provided under section 81(4)(a) of the Traffic Management Act 2004 appointed to perform the functions of the proper officer under this Schedule;

“register” means the register required to be kept under paragraph 21;

“registered keeper” means the person in whose name a vehicle is registered under the Vehicle Excise and Registration Act 1994(a); and

“working day” means any day except a Saturday, a Sunday, Good Friday, Christmas Day or a bank holiday in Wales by virtue of the Banking and Financial Dealings Act 1971(b).

(2) In this Schedule in relation to an appeal or any process connected with an appeal—

“appellant” means the person bringing the appeal;

“disputed decision” means the decision appealed against;

“the enforcement authority” means the enforcement authority which made the disputed decision; and

“the original representations” means the representations to the enforcement authority under regulation 4(1) or 8(4).

PART 2

PROCEDURE RELATING TO APPEALS

Initiating an appeal**2.—(1)** An appeal shall be made by delivering a notice of appeal to the proper officer.**(2)** A notice of appeal—

- (a) must be in writing signed by the appellant or someone authorised by him to sign on his behalf;

(a) 1994 c. 22..

(b) 1971 c.80.

- (b) must state the name and address of the appellant;
- (c) may specify some other address as being the address at which the appellant wishes documents to be sent to him in connection with the appeal;
- (d) must state the date and any reference number of the disputed decision and the name of the enforcement authority; and
- (e) may include any representations which the appellant desires to make in addition to the original representations.

(3) If the notice of appeal is delivered to the proper officer later than the time limit specified in regulation 7(1)(a) or 10(1)(a) (as the case may be), the appellant must include in the notice a statement of the reasons on which he relies for justifying the delay, and the adjudicator shall treat any such statement of reasons for delay as a request for extending that time limit.

Action upon receipt of notice of appeal and copy of such notice

3.—(1) Upon receiving a notice of appeal the proper officer shall—

- (a) send an acknowledgement of its receipt to the appellant, and;
- (b) enter particulars of the appeal in the register.

(2) If he is satisfied that the notice is in accordance with paragraph 2, the proper officer shall send to the enforcement authority a copy of the notice of appeal and any directions extending the time limit for appealing.

(3) Upon receipt of a copy of the notice of appeal sent to it under subparagraph (2), the enforcement authority shall within 7 days deliver to the proper officer copies of—

- (a) the original representations;
- (b) the relevant penalty charge notice (if any); and
- (c) the relevant notice of rejection.

(4) If a notice of appeal is received by the proper officer and he considers that it may not be in accordance with paragraph 2, he shall refer the issue of its validity to an adjudicator.

(5) If the adjudicator determines that a notice of appeal referred to him under subparagraph (4) is in accordance with paragraph 2, the proper officer shall deal with it in accordance with subparagraph (2)

(6) If—

- (a) a notice of appeal is delivered outside the appeal period with a request to extend the appeal period and the adjudicator declines to direct that the period be extended, or
- (b) the adjudicator determines that a notice of appeal is not in accordance with paragraph 2,

the proper officer shall inform the appellant that the adjudicator has declined the request for an extension or, as the case may be, of the reasons why the adjudicator considers that the notice does not accord with paragraph 2 and shall record the action taken in the register.

Further representations

4.—(1) Any party may deliver representations in relation to the matters referred to in regulation 4(2)(b) or 8(4), as appropriate in the circumstances, to the proper officer at any time before the appeal is determined.

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

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

(4) Any representations delivered under this paragraph shall be signed by the party in question , or by someone authorised by him to sign on his behalf.

(5) Where the appellant delivers representations to the proper officer under this paragraph, the proper officer shall send a copy of the representations to the enforcement authority.

(6) Where the enforcement authority delivers representations to the proper officer under this paragraph, it shall at the same time send a copy of the representations to the appellant.

(7) This paragraph is without prejudice to the powers of an adjudicator under paragraph 10.

Adjudicator's power to require attendance of witnesses and production of documents

5.—(1) The adjudicator may, by notice in writing sent to any person (including a party to the proceedings), 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 his custody or under his control, relating to any matter in the proceedings,

and any such notice shall contain a statement of the effect of subparagraphs (2) to (6) below.

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

(3) A person shall not be bound to comply with a requirement under subparagraph (1) unless he has been given at least 7 days' notice of the hearing or, if less than 7 days, he has informed the adjudicator that he accepts such notice as he has been given.

(4) No person, other than the appellant, shall be bound to comply with a requirement under subparagraph (1) unless the necessary expenses of his attendance are paid or tendered to him.

(5) No person shall be required to give any evidence or produce any documents under subparagraph (1) which he could not be required to give or produce in the trial of an action in a court of law.

(6) Any person who fails to comply with a requirement made under subparagraph (1) is guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.

Disposal of an appeal without a hearing

6.—(1) Subject to the following provisions of this paragraph, the adjudicator may dispose of an appeal without a hearing.

(2) The adjudicator shall not dispose of an appeal without a hearing if, in his opinion, the appeal raises issues of public importance such as to require that a hearing be held.

(3) The adjudicator shall not dispose of an appeal without a hearing if either party has requested a hearing unless—

- (a) the party who made the request withdraws the request before notice of a hearing has been sent to the other party under paragraph 7;
- (b) both parties have subsequently consented to the appeal being disposed of without a hearing; or
- (c) the party requesting the hearing having been sent a notice of the hearing of an appeal in accordance with paragraph 7, fails to attend or be represented at the hearing.

(4) Where the adjudicator is minded to dispose of an appeal without a hearing, he shall not do so unless and until either—

- (a) there has elapsed a period of 28 days beginning with the date on which an acknowledgement is sent in accordance with paragraph 3(1) during which neither party has requested a hearing; or
- (b) both parties have consented to its disposal without a hearing.

Notice of time and place of hearing

7.—(1) This paragraph shall have effect where a hearing is to be held for the purpose of disposing of an appeal.

(2) The proper officer shall—

- (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 he thinks fit.

(3) The adjudicator may alter the time and place of any hearing, and the proper officer shall, 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 he thinks fit.

(4) This paragraph 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 shall be required.

Admission to a hearing

8.—(1) Subject to the provisions of this paragraph, a hearing shall be held in public.

(2) The adjudicator may direct that the whole or any part of a hearing be held in private if he is satisfied that it is just and reasonable for him to do so by reason of—

- (a) the likelihood of disclosure of intimate personal or financial circumstances;
- (b) the likelihood of disclosure of commercially sensitive information or information obtained in confidence; or
- (c) exceptional circumstances not falling within paragraph (a) or (b);

(3) The following persons shall be entitled to attend the hearing of an appeal which is held in private—

- (a) any other adjudicator; and
- (b) (for the purpose of discharging his functions as a member of that Council) a member of the Council on Tribunals.

(4) 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.

(5) Without prejudice to any other powers he may have, an 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.

Appearances at a hearing

9.—(1) The appellant and the enforcement authority shall be entitled to appear at the hearing of an appeal.

(2) Any other person may appear at a hearing at the discretion of the adjudicator.

(3) At the hearing of an appeal, the appellant may conduct his case himself (with assistance from any person if he wishes) or may be represented, by a solicitor, counsel or any other person.

(4) If in any particular case the adjudicator is satisfied that there are sufficient reasons for doing so, he may prohibit a particular person from assisting or representing either party at the hearing.

Procedure at a hearing

10.—(1) At the beginning of the hearing of an appeal the adjudicator shall explain the order of proceedings which he proposes to adopt.

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

(3) At the hearing of an appeal—

(a) the parties shall be entitled to give evidence, to call witnesses and to address the adjudicator both on the evidence and generally on the subject matter of the appeal;

(b) the adjudicator may receive evidence of any fact which appears to him to be relevant notwithstanding that such evidence would be inadmissible in proceedings before a court of law.

(4) Without prejudice to paragraph 6(3)(c), where a party who has been sent a notice of the hearing of an appeal or has otherwise been notified of the hearing in accordance with paragraph 7 fails to attend the hearing, the adjudicator may dispose of the appeal in his absence.

Decisions on appeals

11.—(1) The adjudicator must give the reasons for his decision on appeal.

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

(3) Upon the decision being given (whether at a hearing or otherwise), the proper officer shall—

(a) as soon as practicable record the decision in the register, together with the adjudicator's reasons and any directions given; and

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

Review of adjudicator's decision

12.—(1) The adjudicator may, on the application of a party, review—

(a) any interlocutory decision; or

(b) any decision to determine that a notice of appeal does not accord with paragraph 2 or to dismiss or allow an appeal, or any decision as to costs, on one or more of the following grounds—

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

(ii) the adjudicator was wrong to reject the notice of appeal;

(iii) a party who failed to appear or be represented at a hearing had good and sufficient reason for his failure to appear;

(iv) 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;

(v) 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

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

(2) An application under subparagraph (1) 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 parties; and

(b) state the grounds in full.

(3) The parties shall have the opportunity to be heard on any application for review under subparagraph (1).

(4) Having reviewed the decision, the adjudicator may direct that it be confirmed, that it be revoked or that it be varied.

(5) If, having reviewed a decision, the adjudicator directs that it be revoked, he shall substitute a new decision or order a re-determination by himself, the original adjudicator or a different adjudicator.

(6) Paragraph 11 shall apply to the confirmation, revocation or variation of a decision under this paragraph as it applies to a decision made on the disposal of an appeal.

Costs

13.—(1) The adjudicator shall not normally make an order awarding costs and expenses, but may, subject to sub-paragraph (2) make such an order—

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

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

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

Consolidation of proceedings

14.—(1) Where there are pending two or more appeals and at any time it appears to an adjudicator that—

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

the adjudicator may order that both or all of the appeals or those specified in the order shall be considered together and may give such consequential directions as may appear to him to be necessary.

(2) An order shall not be made under this paragraph unless all parties concerned have been given an opportunity of making representations against the making of the order.

Miscellaneous powers of adjudicators

15.—(1) An adjudicator may, if he thinks fit—

- (a) extend the time appointed by or under this Schedule for the doing of any act notwithstanding that the time appointed has expired;
- (b) if an appellant at any time gives notice of the withdrawal of his appeal, dismiss the proceedings;
- (c) if an enforcement authority consents to an appeal being allowed, allow the appeal;
- (d) if both or all of 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) An adjudicator may exercise the powers conferred by this Schedule (other than paragraph 12) on his own motion or on the application of a party.

Clerical errors

16. 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.

PART 3

SERVICE OF DOCUMENTS AND NOTICES

Service of documents on the parties

17.—(1) This paragraph 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 shall be regarded as having been sent to that party if it is—

- (a) delivered to him;
- (b) left at his proper address;
- (c) sent by first class post to him at that address; or
- (d) transmitted to him by fax or other means of electronic data transmission in accordance with subparagraph (3).

(3) A document may be transmitted to a party by fax or by other means of electronic data transmission where—

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

(4) In the case of an enforcement authority, an indication under sub-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 shall, unless the contrary is proved, be taken to have been delivered on the second working day after the day on which it was left.

(6) For the purposes of this Schedule, and of section 7 (references to service by post) of the Interpretation Act 1978^(a) (“the 1978 Act”) in its application to this paragraph,—

- (a) the proper address of the appellant is the address for service specified pursuant to paragraph 2(2)(c) or, if no address is so specified, the address specified pursuant to regulation 2(2)(b), and
- (b) the proper address of an authority in proceedings in which it is the respondent is such address as the authority may from time to time specify in a notice delivered to the proper officer as being the authority’s address for service in all such proceedings.

(7) If no address for service has been specified, the proper address for the purposes of this Schedule, and section 7 of the 1978 Act, shall be—

- (a) in the case of an individual, his usual or last known address;
- (b) in the case of a partnership, the principal or last known place of business of the firm within the United Kingdom;

(a) 1978 c.30.

- (c) in the case of an incorporated or unincorporated body, the registered or principal office of the body.
- (8) A party may at any time, by notice in writing delivered to the proper officer, change his proper address for the purposes of this Schedule and section 7 of the 1978 Act.
- (9) A party may, by notice in writing delivered to the other party and the proper officer, vary or revoke any indication given under subparagraph (3)(a).
- (10) Unless the contrary is proved, a notice or document—
 - (a) left at the proper address of a party shall 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 shall 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

18.—(1) This paragraph 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 other means of electronic data transmission, but only to a telephone number or, as the case may be, electronic 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 shall, unless the contrary is proved, be taken to have been delivered on the second 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 shall be taken to have been delivered on the second working day after the day on which it was left.

(5) Paragraphs 2(2)(a) and 4(4)—

- (a) shall, 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) shall not apply in relation to a document transmitted by other means of electronic data transmission.

PART 4

DIRECTIONS AS TO INVALID NOTICES

Scope of Part 4

19. Paragraph 20 applies to a case where—

- (a) the order of a county court which has been made against a person (“a relevant person”) in accordance with regulation 15 of the Enforcement and Adjudication Regulations is deemed to have been revoked following the making of a witness statement; and
- (b) the enforcement authority has referred the case to the adjudicator for directions.

Procedure

20.—(1) In a case to which this paragraph applies

- (a) the proper officer shall enter particulars of the case in the register; and

- (b) the adjudicator shall give directions as to the conduct of the proceedings unless he decides that no such directions are necessary.
- (2) The adjudicator may, in particular—
- (a) if it appears to him that no appeal has been made by the relevant person in relation to the subject matter of the case, direct that the case proceed as an appeal and, in that event, this Schedule (except paragraphs 2 and 3) shall apply as if an appeal had been duly made by the relevant person; or
 - (b) if it appears to him that an appeal has been made by the relevant person in relation to the subject matter of the case and that the appeal has been dismissed, direct that the case proceed as an application under paragraph 12 to review that decision.

PART 5

THE REGISTER

The register

21.—(1) The proper officer shall establish and maintain, in accordance with the following provisions of this paragraph, a register for the purpose of recording proceedings conducted under these Regulations.

(2) The register shall be kept open for inspection by any person without charge at all reasonable hours at the principal office of the 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 to be a true copy of any entry of a decision in a register shall be evidence of the entry and of the matters contained in it.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which apply to Wales, make provision entitling a person who is or may be liable to pay a penalty charge in respect of a parking contravention, or who secures the release of a vehicle from an immobilisation device which has been fixed to it on account of such a contravention, to make representations to the enforcement authority regarding his liability for charges and to appeal to an adjudicator if his representations are not accepted. These Regulations should be read in conjunction with the Civil Enforcement of Parking Contraventions (General Provisions) (Wales) Regulations 2008 (S.I.2008/614(W66) (“the General Provisions Regulations”), The Civil Enforcement of Parking Contraventions (Representations and Appeals about Removed Vehicles) (Wales) Regulations 2008 (S.I.2008/615(W67) (“the Removed Vehicles Regulations”) and the Civil Enforcement of Parking Contraventions (Penalty Charge Notices, Enforcement and Adjudication) (Wales) Regulations 2008 (S.I.2008/609) (“the Enforcement and Adjudication Regulations”).

The Traffic Management Act 2004 (“the 2004 Act”) reserved certain aspects of the parking enforcement regime to the Lord Chancellor. Accordingly, these Regulations and the Enforcement and Adjudication Regulations are made by the Lord Chancellor and are thus subject to Parliamentary procedure.

Part 1 contains preliminary provisions.

Part 2 concerns representations and appeals against penalty charge notices and notices to owner given under the General Provisions Regulations and the Enforcement and Adjudication Regulations. *Regulation 3* defines the scope of *Part 2* and specifies the information to be given to the recipients of penalty charge notices and notices to owner. *Regulation 4* confers on the recipient of a notice to owner or penalty charge notice given under regulation 6 of the Enforcement and Adjudication Regulations the right to make representations to the enforcement authority which served it. *Regulations 5 and 6* set out the duties of an enforcement authority to which representations are made. *Regulation 7* enables a person who has made representations under *regulation 4* to appeal to an adjudicator against an enforcement authority’s rejection of his representations.

Part 3 makes equivalent provision to *Part 2* for representations and appeals in relation to vehicles which have been immobilised in accordance with the General Provisions Regulations. *Regulation 8* confers, on the owner or person in charge of a vehicle who secures its release from an immobilisation device fixed in accordance with the General Provisions Regulations, a right to make representations to the enforcement authority and to appeal to an adjudicator, where those representations are rejected. The enforcement authority is required to inform the person securing the release of the vehicle of his rights in writing. The basis for making representations is specified in *regulation 8(4) and (5)*. *Regulation 9* sets out the duties of an enforcement authority to which representations are made and *regulation 10* provides for an appeal to be made to an adjudicator where representations under *regulation 9* are rejected.

Part 4 relates to offences and procedure. *Regulation 11* creates an offence of making false or reckless representations under these Regulations. *Regulation 12* introduces *the Schedule* which makes detailed provision as to the procedure to be followed in adjudication proceedings, the service of documents in such proceedings and the requirements to keep a register. Otherwise the procedure is in the discretion of the adjudicator.

A full Regulatory Impact Assessment and Explanatory Memorandum can be obtained from the Integrated Transport Unit, Transport, Planning and Administration Division, Transport Wales, Welsh Assembly Government, Crown Offices, Cathays Park, Cardiff, CF10 3NQ or on the Welsh Assembly Government website at <http://www.assemblywales.org/bus-home/buslegislation/bus/bus-legislation-sub/bus-legislation-sub-annulment.htm>

£4.00

© Crown copyright 2008

Printed and published in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of Her Majesty's
Stationery Office and Queen's Printer of Acts of Parliament.

E2202 3/2008 182202T 19585