

# SCHEDULES

## SCHEDULE 8

Article 44(21)

### REMOVAL OF MOTOR VEHICLES AND RECOVERY OF PENALTY CHARGES

#### PART 1

##### PRELIMINARY

**1.—(1)** In this Schedule—

- “adjudicator” means a person specified in article 44(22) (removal of motor vehicles);
- “appeal” means an appeal under paragraph 4(1) or 9(1);
- “appellant” means the person bringing the appeal;
- “hearing” means an oral hearing;
- “hiring agreement” has the same meaning as in section 66 (hired vehicles) of the Road Traffic Offenders Act 1988(1);
- “penalty charge notice” has the meaning given in paragraph 5;
- “person liable” means the registered keeper of a motor vehicle;
- “the statement of charges” means the statement of charges published under article 54(5) (power to charge for use of the tunnels) applying by virtue of article 44(16) and
- “vehicle-hire firm” has the same meaning as in section 66 of the Road Traffic Offenders Act 1988.

(2) In determining for the purposes of any provision of this Schedule whether a charge or penalty charge has been paid before the end of a particular period, it must be taken to be paid when it is received by TfL.

#### PART 2

### REPRESENTATIONS AND APPEALS IN RELATION TO THE REMOVAL OF MOTOR VEHICLES

**Persons to whom Part 2 applies**

- 2.** This Part of this Schedule applies to a person (referred to as a “relevant person”) who—
- (a) pays or causes to be paid a penalty charge to recover a motor vehicle after it has been removed from the tunnels area in accordance article 44;
  - (b) receives any sum after a motor vehicle has been sold or destroyed in accordance with article 44; or

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(1) 1988 c. 53.

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- (c) is informed that the proceeds of disposal of a motor vehicle do not exceed the amount of the penalty charges payable in respect of the motor vehicle in accordance with article 44.

**Right to make representations**

3.—(1) A relevant person must, on the happening of an event such as is referred to in sub-paragraph (a), (b) or (c) of paragraph 2, immediately be informed by notice in writing, by or on behalf of TfL, of that person’s right to make representations under this paragraph and that person’s right of appeal under paragraph 4.

(2) A relevant person may make representations in writing to TfL on one or more of the grounds mentioned in sub-paragraph (3).

(3) The grounds are—

- (a) that the penalty charge paid to secure the release or recovery of the motor vehicle exceeded the amount applicable in the circumstances of the case;
- (b) in a case where the motor vehicle was removed and penalty charges were outstanding with respect to the motor vehicle, that—
  - (i) those penalty charges were all incurred before the person liable in relation to the motor vehicle at the time of its removal had become the person liable in relation to that motor vehicle; or
  - (ii) the number of penalty charges incurred after that person had become the person liable was fewer than such number as may be specified in the statement of charges; or
- (c) that the relevant person is a vehicle-hire firm and—
  - (i) the motor vehicle in question was at the time the motor vehicle was removed hired from that firm under a hiring agreement; and
  - (ii) the person hiring it had signed a statement of liability acknowledging that person’s liability in respect of any penalty charge incurred in respect of the motor vehicle during the currency of the hiring agreement.

(4) TfL may disregard any representations received by it after the end of the period of 28 days beginning with the date on which the relevant person is informed in accordance with sub-paragraph (1) of that person’s right to make representations.

(5) It is the duty of the person to whom representations are made under this paragraph, before the end of the period of 56 days beginning with the day 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 a notice of its decision as to whether or not it accepts that the ground in question has been established.

(6) Where TfL serves notice under sub-paragraph (5)(b) that it accepts that a ground has been established it must (when serving that notice or as soon as practicable after it has done so) refund any penalty charge or charges—

- (a) paid to recover the motor vehicle after it had been removed from the tunnels area;
- (b) deducted from the proceeds of sale of the motor vehicle,

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

(7) Where TfL serves notice under sub-paragraph (5)(b) that it does not accept that a ground has been established, that notice must—

- (a) inform the relevant person of that person’s right to appeal to an adjudicator;

- (b) indicate the nature of the adjudicator’s power to award costs against any person making a valid appeal;
  - (c) describe in general terms the form and manner in which such an appeal is required to be made; and
  - (d) provide such other information as TfL considers appropriate.
- (8) Where TfL fails to comply with sub-paragraph (5) before the end of the period of 56 days there mentioned—
- (a) TfL is deemed to have accepted that the ground in question has been established and to have served notice to that effect under sub-paragraph (6); and
  - (b) sub-paragraph (6) has effect as if it required any refund to be made immediately after the end of that period.
- (9) Any notice required to be served under this paragraph may be served personally or by post or in such form as is agreed between TfL and the relevant person.
- (10) Where the person on whom any document is required to be served by sub-paragraph (5) is a body corporate, the document is duly served if it is sent by post or any such form as is agreed to the secretary or clerk to that body.

#### **Right to appeal to an adjudicator**

- 4.—(1) Where TfL serves notice under paragraph 3(5)(b) that it does not accept that a ground on which representations were made under that paragraph has been established, the person making those representations may appeal to an adjudicator against TfL’s decision, before—
- (a) the end of the period of 28 days beginning with the date of service of the notice; or
  - (b) such longer period as an adjudicator may allow following consultation with TfL.
- (2) An adjudicator may allow a longer period for an appeal under paragraph (1)(b) whether or not the period specified in paragraph (1)(a) has already expired.
- (3) On an appeal under this paragraph, the adjudicator must consider the representations in question and any additional representations which are made by the appellant on any of the grounds mentioned in paragraph 3(3) and, if the adjudicator concludes—
- (a) that any of the representations are justified; and
  - (b) that TfL would have been under the duty imposed by paragraph 3(6) to refund any sum if TfL had served notice that it accepted that the ground in question had been established,
- the adjudicator must direct the authority to make the necessary refund.
- (4) TfL must comply with a direction of the adjudicator.

## **PART 3**

### **RECOVERY OF PENALTY CHARGES**

#### **Penalty charge notices**

- 5.—(1) Where a charge with respect to a motor vehicle under the statement of charges has not been paid by the time by which it is required by the statement of charges to be paid and, in those circumstances, the statement of charges provides for the payment of a penalty charge, TfL may serve a notice (“a penalty charge notice”).
- (2) A penalty charge notice must be served on the registered keeper of the motor vehicle.

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- (3) A penalty charge notice must state—
- (a) the amount of the penalty charge to which it relates;
  - (b) the grounds on which TfL believes that the penalty charge is payable with respect to the motor vehicle;
  - (c) the time, in accordance with the statement of charges under which it is imposed, and the manner in which the penalty charge must be paid;
  - (d) the amount of the reduced penalty charge if it is duly paid in the time specified in the statement of charges;
  - (e) the amount of the increased penalty charge if—
    - (i) the penalty charge is not paid; or
    - (ii) no representations are made under paragraph 6, before the end of the relevant period as defined by paragraph 10(3)(a);
  - (f) the address to which payment of the penalty charge must be sent;
  - (g) that the person on whom the notice is served (“the recipient”) may be entitled to make representations under paragraph 10; and
  - (h) the effect of paragraph 9.

#### **Representations against penalty charge notice**

6.—(1) Where it appears to the recipient that one or other of the grounds mentioned in sub-paragraph (3) are satisfied, the recipient may make representations in writing to that effect to TfL.

(2) TfL may disregard any such representations which are received by it after the end of the period of 28 days beginning with the date on which the penalty charge notice was served.

- (3) The grounds are—
- (a) that the recipient—
    - (i) never was the registered keeper in relation to the motor vehicle in question;
    - (ii) had ceased to be the person liable before the date on which the motor vehicle was used in the tunnels; or
    - (iii) became the person liable after that date;
  - (b) that the charge payable for the use or keeping of the motor vehicle on a road on the occasion in question was paid at the time and in the manner required by the statement of charges;
  - (c) that no penalty charge is payable under the statement of charges;
  - (d) that the motor vehicle had been used or kept, or permitted to be used or kept, on a road by a person who was in control of the motor vehicle without the consent of the registered keeper;
  - (e) that the penalty charge exceeded the amount applicable in the circumstances of the case;
  - (f) that the recipient is a vehicle-hire firm and—
    - (i) the motor 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 liability in respect of any penalty charge notice imposed in relation to the motor vehicle during the currency of the hiring agreement.

(4) Where the ground mentioned in sub-paragraph (3)(a)(ii) is relied on in any representations made under this paragraph, those representations must include a statement of the name and address

of the person to whom the motor vehicle was disposed of by the person making the representations (if that information is in that person's possession).

(5) Where the ground mentioned in sub-paragraph (3)(a)(iii) is relied on in any representations made under this paragraph, those representations must include a statement of the name and address of the person from whom the motor vehicle was acquired by the person making the representations (if that information is in that person's possession).

(6) Where representations are duly made under this paragraph to TfL it must—

- (a) consider them and any supporting evidence which the person making them provides; and
- (b) serve on that person notice of its decision as to whether or not it accepts that the ground in question has been established.

### **Cancellation of penalty charge notice**

7.—(1) Where representations are made under paragraph 6 and TfL accepts that the ground in question has been established it must—

- (a) cancel the penalty charge notice; and
- (b) state in the notice served under paragraph 6(6) that the penalty charge notice has been cancelled.

(2) The cancellation of a penalty charge notice under this paragraph is not to be taken to prevent TfL concerned from serving a fresh penalty charge notice on the same or another person.

### **Rejection of representations against penalty charge notice**

8.—(1) Where any representations are made under paragraph 6 but TfL does not accept that a ground has been established, the notice served under paragraph 6(6) (“the notice of rejection”) must—

- (a) state that a charge certificate may be served under paragraph 10 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 against any person appealing to the adjudicator; 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 may contain such other information as TfL considers appropriate.

### **Adjudication by an adjudicator**

9.—(1) Where TfL serves notice under paragraph 6(6) that it does not accept that a ground on which representations were made under that paragraph has been established, the person making those representations may appeal to an adjudicator against TfL's decision before—

- (a) the end of the period of 28 days beginning with the date of service of that notice; or
- (b) such longer period as an adjudicator may allow, following consultation with TfL.

(2) An adjudicator may allow a longer period for an appeal under sub-paragraph (1)(b) whether or not the period specified in sub-paragraph (1)(a) has already expired.

(3) On an appeal under this paragraph, the adjudicator must consider the representations in question and any additional representations which are made by the appellant on any of the

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grounds mentioned in paragraph 6(3) and may give TfL such directions as the adjudicator considers appropriate.

(4) TfL must comply with a direction of the adjudicator given under sub-paragraph (3).

### **Charge certificates**

**10.**—(1) Where a penalty charge notice is served on any person and the penalty charge to which it relates is not paid before the end of the relevant period, TfL may serve on that person a statement (a “charge certificate”) to the effect that the penalty charge in question is increased to the sum specified in the statement of charges under which it was incurred.

(2) Where TfL has served a charge certificate on any person it may cancel the charge certificate and serve or cancel such further charge certificates as it thinks fit.

(3) The relevant period, in relation to a penalty charge notice, is the period of 28 days beginning—

- (a) where no representations are made under paragraph 6, with the date on which the penalty charge notice is served;
- (b) where—
  - (i) such representations are made;
  - (ii) a notice of rejection is served by TfL; and
  - (iii) no appeal against the notice of rejection is made,
 with the date on which the notice of rejection is served; or

(c) where there has been an unsuccessful appeal against a notice of rejection, with the date on which notice of the adjudicator’s decision is served on the appellant.

(4) Where an appeal against a notice of rejection is made but is withdrawn before the adjudicator gives notice of the adjudicator’s decision, the relevant period in relation to a penalty charge notice is the period of 14 days beginning with the date on which the appeal is withdrawn.

### **Enforcement of charge certificate**

**11.** Where a charge certificate has been served on any person and the increased penalty charge provided for in the certificate is not paid before the end of the period of 14 days beginning with the date on which the certificate is served, TfL may, if a county court so orders, recover the increased charge as if it were payable under a county court order.

### **Invalid notices**

**12.**—(1) This paragraph applies where—

- (a) a county court makes an order under paragraph 11;
- (b) the person against whom it is made makes a statutory declaration complying with sub-paragraph (2); and
- (c) that declaration is, before the end of the period of 21 days beginning with the date on which notice of the county court’s order is served on that person, served on the county court which made the order.

(2) The statutory declaration must state that the person making it—

- (a) did not receive the penalty charge notice in question;
- (b) made representations to TfL under paragraph 6 but did not receive a notice of rejection; or
- (c) appealed to an adjudicator under paragraph 9 against the rejection by TfL of representations made by that person under paragraph 6 but had no response to the appeal.

(3) Sub-paragraph (4) applies where it appears to a county court, on the application of a person on whom a charge certificate has been served, that it would be unreasonable in the circumstances of that person's case to insist on that person serving a statutory declaration within the period of 21 days allowed for by sub-paragraph (1).

(4) Where this sub-paragraph applies, the county court may allow such longer period for service of the statutory declaration as the county court considers appropriate.

(5) Where a statutory declaration is served under sub-paragraph (1)(c)—

- (a) the order of the court is deemed to have been revoked;
- (b) the charge certificate is deemed to have been cancelled;
- (c) in the case of a declaration under sub-paragraph (2)(a), the penalty charge notice to which the charge certificate relates is deemed to have been cancelled; and
- (d) the district judge must serve written notice of the effect of service of the declaration on the person making it and on TfL.

(6) Service of a declaration under sub-paragraph (2)(a) must not be taken to prevent TfL from serving a fresh penalty charge notice on the same or another person.

(7) Where a declaration has been served under sub-paragraph (2)(b) or (c), TfL must refer the case to the adjudicator who may give such directions as the adjudicator considers appropriate.

### **Enforcement by execution**

13.—(1) Subject to sub-paragraph (2)—

- (a) an unpaid penalty charge which is recoverable in accordance with paragraph 11 as if it were payable under a county court order; and
- (b) a sum to be paid by a person (other than TfL) under an adjudication of an adjudicator which is recoverable in accordance with paragraph 14 as if it were payable under a county court order,

is to be treated for purposes of enforcement by execution as if it was a specified debt in the Enforcement of Road Traffic Debts Order 1993 (“the 1993 Order”)(2).

(2) For the purposes of the enforcement of an unpaid penalty charge referred to in sub-paragraph (1)(a) or the enforcement of the payment of a sum referred to in sub-paragraph (1)(b)—

- (a) any reference in the 1993 Order to “the authority” is to be treated as a reference to TfL; and
- (b) the reference in article 3(1) of the 1993 Order to “the time for serving a statutory declaration” is to be treated as a reference to, as the case may be—
  - (i) the period of 21 days allowed by paragraph 12(1)(c); or
  - (ii) where a longer period has been allowed pursuant to paragraph 12(4), that period.

14. Any amount which is payable under an adjudication must, if a county court so rules, be recoverable by the person to whom the amount is payable, as if it were payable under a county court order.

### **Service by post**

15. Any penalty charge notice, charge certificate or other notice under this Schedule may be served by post (or in such other form as is agreed between the person to be served and TfL) and, where the person on whom it is to be served is a body corporate, is duly served if it is sent by post to the secretary or clerk of that body.

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(2) S.I. 1993/2073.

**Status:** This is the original version (as it was originally made).

## **Procedure**

**16.** The procedure to be applied to proceedings under this Schedule is that which applies to adjudication proceedings in relation to road user charging under the Road User Charging (Enforcement and Adjudication) (London) Regulations 2001<sup>(3)</sup> as amended from time to time.

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<sup>(3)</sup> S.I. 2001/2313.