
WELSH STATUTORY INSTRUMENTS

2008 No. 615 (W.67)

ROAD TRAFFIC, WALES

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

<i>Made</i>	- - - -	<i>6 March 2008</i>
<i>Laid before the National Assembly for Wales</i>	- -	<i>10 March 2008</i>
<i>Coming into force</i>	- -	<i>31 March 2008</i>

The Welsh Ministers, in exercise of the powers conferred on the Secretary of State for Transport by section 101B of the Road Traffic Regulation Act 1984(1), subsequently transferred to the National Assembly for Wales and now vested in them(2) hereby make the following Regulations:

Title, commencement and application

1. The title of these Regulations is the Civil Enforcement of Parking Contraventions (Representations and Appeals) Removed Vehicles (Wales) Regulations 2008, they come into force on 31 March 2008, and apply in relation to Wales.

Interpretation

2. In these Regulations—

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

“the 2004 Act” (“*Deddf 2004*”) means the Traffic Management Act 2004(3);

“adjudicator” (“*dyfarnydd*”) means an adjudicator appointed under Part 3 of the Enforcement and Adjudication Regulations;

-
- (1) 1984 c. 27; section 99 was amended by the Road Traffic Act 1991 (c. 40), Schedule 4, paragraph 32, and Schedule 8 and by the Clean Neighbourhoods and Environment Act 2005 (c. 16), section 15 and Schedule 5, Part 1; sections 101A and 101B were inserted by the Traffic Management Act 2004, Schedule 11, paragraph 3(2). The functions of the Secretary of State for Transport and of the Lord Chancellor in relation to sections 99 to 103 of the Road Traffic Regulation Act 1984 were transferred to the National Assembly for Wales under the provisions of The National Assembly for Wales (Transfer of Functions) Order 2004 (S.I. 2004/3044).
- (2) The functions of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).
- (3) 2004 c. 18.

“civil enforcement area for parking contraventions”, “enforcement authority” and “penalty charge” (“*ardal gorfodi sifil am dramgwyddau parcio*”, “*awdurdod gorfodi*” a “*tâl cosb*”) have the same meanings as in Part 6 of the 2004 Act;

“the General Provisions Regulations” (“*y Rheoliadau Darpariaethau Cyffredinol*”) means the Civil Enforcement of Parking Contraventions (General Provisions)(Wales) Regulations 2008(4);

“the Enforcement and Adjudication Regulations” (“*y Rheoliadau Gorfodi a Dyfarnu*”) means the Civil Enforcement of Parking Contraventions (Penalty Charge Notices, Enforcement and Adjudication)(Wales) Regulations 2008(5); and

“the Representations and Appeals Regulations” (“*y Rheoliadau Sylwadau ac Apelau*”) means the Civil Enforcement of Parking Contraventions (Representations and Appeals)(Wales) Regulations 2008(6)

Right to make representations about a removed vehicle

3.—(1) This regulation applies to a person where, as respects a vehicle which has been found in a civil enforcement area for parking contraventions and removed under section 99 of the 1984 Act—

- (a) he or she is required to pay an amount on recovery of the vehicle under section 101A of that Act;
- (b) he or she receives a sum in respect of the vehicle under section 101A(2) of that Act;
- (c) he or she is informed that the proceeds of sale of the vehicle did not exceed the aggregate amount of the relevant charges as described in section 101A(2) and (3) of that Act; or
- (d) he or she is informed that the vehicle was disposed of without there being any proceeds of sale.

(2) A person to whom paragraph (1) applies must immediately upon the happening of an occurrence referred to in paragraph (1) be informed—

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

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

(3) The information referred to in paragraph (2), must be provided by the enforcement authority, or cause it to be provided, 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—
 - (i) refund some or all of the amount that was paid to secure the release of the vehicle;
 - (ii) refund some or all of the amount that was deducted from the proceeds of sale in respect of relevant charges; or
 - (iii) waive its right to recover all or any of the sums due to it on account of the removal or disposal of the vehicle,

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

(4) S.I. 2008/614 (W.66).

(5) S.I. 2008/609.

(6) S.I. 2008/608.

- (5) The grounds referred to in paragraph (4)(a) are—
- (a) that the vehicle had not been permitted to remain at rest in a civil enforcement area for parking contraventions in circumstances in which a penalty charge was payable by virtue of regulation 3 of the General Provisions Regulations;
 - (b) that a civil enforcement officer had not, in accordance with regulation 5 of the Enforcement and Adjudication Regulations, fixed a penalty charge notice to the vehicle or handed such a notice to the person appearing to him or her to be in charge of the vehicle, before the vehicle was removed;
 - (c) that, at the time the vehicle was removed, the power to remove the vehicle conferred by paragraph (2) of regulation 5C of the Removal and Disposal of Vehicles Regulations 1986(7) was, by virtue of paragraph (3) of that regulation, not exercisable;
 - (d) 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;
 - (e) that the place where the vehicle was at rest was not in a civil enforcement area for parking contraventions;
 - (f) 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
 - (g) that there has been procedural impropriety on the part of the enforcement authority.

(6) In determining the form for making representations under paragraph (4) the enforcement authority must act through the joint committee through which, in accordance with regulation 8 of the Enforcement and Adjudication Regulations, it exercises its function of appointing adjudicators.

Duty of enforcement authority to which representations are made

4.—(1) The enforcement authority may disregard any representations under regulation 3 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 3(2) of his or her right to make representations.

(2) Subject to paragraph (1), if representations are made to it in accordance with regulation 3(4), it will be the duty of the enforcement authority, 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 it accepts that—
 - (i) a ground specified in regulation 3(5) applies; or
 - (ii) there are compelling reasons of the kind referred to in regulation 3(4)(b).

(3) Where an authority serves notice under paragraph (2)(b)(i) that it accepts that a ground specified in regulation 3(5) applies it must (when serving that notice) —

- (a) refund any sums that —
 - (i) the person to whom the vehicle was released was required to pay under section 101A(1) of the 1984 Act; or
 - (ii) were deducted from the proceeds of sale of the vehicle in accordance with section 101A(2) of that Act,except to the extent (if any) to which those sums were properly paid or deducted; and

- (b) inform the person making representations that it has waived the right to recover any sum which might otherwise have been due to it by way of a penalty charge or on account of the removal, storage or disposal of the vehicle.
- (4) Where an authority serves notice under paragraph (2)(b)(ii) that it accepts that there are such compelling reasons, it must (when serving that notice)—
 - (a) refund the sums referred to in paragraph (3)(a) or such of them as it considers appropriate in the circumstances of the case; and
 - (b) inform the person making representations that it has waived the right to recover any sum which might otherwise have been due to it by way of a penalty charge or on account of the removal, storage or disposal of the vehicle.
- (5) An authority which has waived its right to recover a sum loses its right to do so.
- (6) Where an authority serves notice under paragraph (2)(b) that it does not accept that paragraph (2)(b)(i) or (ii) is fulfilled, that notice must—
 - (a) inform the person on whom it is served of his or her right to appeal to an adjudicator under regulation 5;
 - (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.
- (7) Where an authority fails to comply with paragraph (2) before the end of the period of 56 days mentioned there it will be treated as having accepted the representations and to have served notice to that effect under paragraph (2)(b) and paragraph (3) will apply accordingly.

Appeals to an adjudicator in relation to decisions under regulation 4

- 5.—**(1) Where an authority serves notice under regulation 4(2)(b) in relation to representations under regulation 3(4), the person making those representations may, 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,
- appeal to an adjudicator against the authority's decision.
- (2) On an appeal under this regulation, the adjudicator must consider the representations in question and any additional representations that are made by the appellant.
- (3) If the adjudicator concludes—
- (a) that any of the grounds referred to in subparagraphs (a) to (g) of regulation 3(5) apply; and
 - (b) that the enforcement authority would have been under the duty imposed by regulation 4(3) to refund any sum if it had served notice that it accepted that the ground in question applied,
- he or she must direct that authority to refund that sum.
- (4) It will be the duty of an enforcement authority to which a direction is given under paragraph (3) to comply with it forthwith and the enforcement authority will cease to have any right to recover any sum which might otherwise have been due to it by way of a penalty charge or on account of the removal, storage or disposal of the vehicle.
- (5) If the adjudicator makes no direction under paragraph (3) but is satisfied that 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, or deducted from the proceeds of sale, should be refunded, he or she may recommend that the enforcement authority should make such a refund.
- (6) It is 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 (“the 35-day period”) of thirty-five days 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 must at the same time inform them of the reasons for its decision.

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

(9) If the enforcement authority accepts the adjudicator’s recommendation it must 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 will be taken to have accepted the adjudicator’s recommendation and must make the recommended refund immediately after the end of that period.

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

6.—(1) The Schedule to the Representations and Appeals Regulations (“the Schedule”) has effect as to the procedure and the service of documents in adjudication proceedings under these Regulations as if it were incorporated in these Regulations subject to the modifications specified in paragraph (3).

(2) Accordingly references in that Schedule as it has effect by virtue of paragraph (1) to these Regulations must be taken as references to these Regulations and not to the Representations and Appeals Regulations.

(3) The modifications referred to in paragraph (1) are—

- (a) in paragraph 1(1), in the definition of “appeal” for “regulation 7(1) or 10(1)” there is substituted “regulation 5”;
- (b) in paragraph 2(3), for “regulation 7(1)(a) or 10(1)(a) (as the case may be)” there is substituted “regulation 5”;
- (c) in paragraph 4(1) for “regulation 4(2)(b) or 8(4), whichever is appropriate in the circumstances” there is substituted “regulation 3(5)”.

(4) Subject to the provisions of that Schedule as so modified, an adjudicator may regulate his or her own procedure.

(5) Any amount which is payable—

- (a) by way of an adjudicator’s decision;
- (b) by virtue of any provision of the Representations and Appeals Regulations which requires an enforcement authority to refund any sum,

must, 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.

(6) Paragraph (3) does not apply to a penalty charge which remains payable following an adjudication under regulation 7 of the Representations and Appeals Regulations.

False Representations

7.—(1) A person who makes any representation under regulation 3 or 4, or under the Schedule so far as it relates to an appeal, which is false in a material particular and does so recklessly or knowing it to be false in that particular, is guilty of an offence.

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

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

6 March 2008

Ieuan Wyn Jones
Minister for the Economy and Transport, one of
the Welsh Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under powers conferred upon the Secretary of State for Transport by section 101B of the Road Traffic Regulation Act 1984. The functions of the Secretary of State for Transport and of the Lord Chancellor in relation to sections 99 to 103 of the Road Traffic Regulation Act 1984 were transferred to the National Assembly for Wales under the provisions of the National Assembly for Wales (Transfer of Functions) Order 2004 (S.I.2004/3044). These powers were subsequently transferred to the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006. The Regulations provide for the making of representations and appeals against charges for the removal, storage and disposal of a vehicle removed under that Act from an area which is a civil enforcement area for parking contraventions in accordance with Part 6 of the Traffic Management Act 2004.

These Regulations are to be read in conjunction with the Civil Enforcement of Parking Contraventions (General Provisions)(Wales) Regulations 2008 (S.I. 2008/614 (W.66)), the Civil Enforcement of Parking Contraventions (Representations and Appeals) (Wales) Regulations 2008 (S.I. 2008/608) and the Civil Enforcement of Parking Contraventions (Penalty Charge Notices, Enforcement and Adjudication)(Wales) Regulations 2008 (S.I. 2008/609).

Regulation 3 specifies the persons to whom the regulation applies, requires such persons to be informed of their right to make representations and to appeal to an adjudicator, confers on such persons a right to make representations in a form specified by the enforcement authority and specifies the basis on which they may be made. Regulation 4 specifies the duties of an enforcement authority in relation to representations received by it under regulation 3 and Regulation 5 confers a right to appeal to an adjudicator where the enforcement authority rejects representations made to it under regulation 3. Regulation 6 applies the Schedule to the Civil Enforcement of Parking Contraventions (Representations and Appeals)(Wales) Regulations 2008 (S.I. 2008/608) to procedure and the service of documents in adjudicator proceedings under these Regulations. Regulation 7 creates an offence of making false representations under regulation 4 or regulation 5.

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>